

Rights-Based Evaluation of Government Responses to a Given 'Natural' Disaster: Katrina as
Case Study

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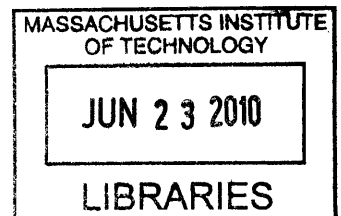
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Abstract

Disaster impacts human mobility and a rights-based approach to disaster response is needed to protect the human rights of those who seek migration as an adaptation strategy. This paper deals with returning to a place after a catastrophic environmental disaster when the dynamics of that place call into question the tenability of place. The overarching question of the research is “How is disaster socially constructed at the largest societal scales and how do differences in these interpretations interact in a crisis?” Specifically, I break down this broad framework into two main questions: How does the United States federal government situate itself in terms of taking responsibility for displaced persons to return to their home? How are international laws and customary norms socially constructed around rights and return? This paper takes as a case study the legacy of Hurricane Katrina. This paper argues that the right to return is an obligation to return displaced persons to a state of dignity, not necessarily a specific geographic location.

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Chapter 1

Introduction

James Carville, liberal pundit and New Orleans booster, refers to the legacy of Hurricane Katrina as the “K-word,” reflecting the fact that what is known as “Katrina” is about more than just a big hurricane. By now it should be clear that the tragedy was a chain of interconnected environmental and political events that exposed chronic social issues. “Katrina” refers collectively to the actual hurricane by that name, the failure of the physical infrastructure of levees especially along the 17th Street, Industrial and London Canals, the subsequent Hurricanes Rita and Wilma, the uncoordinated responses on the parts of local, state and federal government, and the incredibly slow recovery of the Gulf Coast, but particularly of the City of New Orleans. Katrina brought to light our modern anxieties about nature such as urbanization of coastal areas and maintenance of large-scale development structures through economic high and low cycles. To be sure, the Category 5 hurricane should not be swept aside as insignificant. Preparing, responding to, recovering and mitigating disasters that expose the intersection of ecological and social vulnerability is one key challenge of urban planning in the future.

No Simple Cause and Effect

The Katrina legacy has been investigated and analyzed from every angle. Yet, because recovery continues, the conversation is not over. It provides a remarkably rich and useful illustration of where we are at in the discourse in terms of how to frame the experience of the displaced as a group and what response is appropriate for the authorities, the international community, the displaced, and individual civil society actors.

This paper deals with the right to return as it is interpreted at the federal and international levels. The overarching question of the research is “How is disaster socially constructed at the largest societal scales and how do differences in these interpretations interact in a crisis?” This paper takes as a case study the legacy of Katrina. In this paper, I will attempt to trace scholarly understandings of displacement and disaster through global dialogue on environmental migrants, sociological theory-making on development-forced displacement and resettlement (DFDR), practical applications of disaster research, and geologic and hydrological studies of the past and future landscapes.

While reviewing the literature, I keep in mind how theory interacts with praxis and how theory has evolved to inform our current understanding of the Katrina legacy. It is with this foundation that I analyze the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, the principal domestic legislation governing disaster preparation, response, recovery and mitigation. I interweave interviews with FEMA employees who use this document daily in the recovery process and have first-hand knowledge of what the Act means to displaced persons on the ground. After this discussion, I shift the lens to see how the international community frames the experience of the displaced. In this section, I categorize documented incidents that occurred during and immediately after the actual Hurricanes Katrina and Rita to see how they measure up to normative baselines ratified or acknowledged by the United States through international treaties and customary norms. I conclude with a return to the questions posed above regarding the rights of the displaced. Limitations in how different actors – the displaced, domestic law, international law and global citizens¹ – view the problem are discussed.

¹ I use the term “global citizen” as Martha Nussbaum (2002) conceptualizes it: “1) the Socratic ability to criticize one’s own traditions and to carry on an argument on terms of mutual respect for reason, 2) ability to think as a citizen of the whole world, not just some local region or group, and 3) the ‘narrative imagination,’ the ability to imagine what it would be like to be in a position of someone very different from oneself.”

In conclusion, I make a normative statement that the right to return should be interpreted by the federal government as a right to return to dignity, not necessarily a right to return to a specific geographic location. A longer temporal and spatial perspective of the Katrina legacy shows us that the right to return in America depends on how the displaced conceptualize their role in rebuilding and how the federal authorities change and use the Stafford Act in recovery, mitigation and preparation for the next disaster.

Katrina in Time

The temporal scale of Katrina is usually confined to a few days before and few days after the actual Hurricane Katrina hit New Orleans on August 29, 2005 (see Appendix 2 for sample Timeline from the Brookings Institution). Most stories of Katrina begin as early as the 24th or 25th of August 2005 when the tropical storm was spotted headed for Florida. Some narratives skip this part altogether deciding instead to focus solely on Louisiana/Mississippi. Recounting the incidents that proceed, they make sure to include key events like what time the magnitude of the storm was known, what key politicians (especially President George W Bush, Governor Kathleen Blanco, Mayor Ray Nagin) said they knew what when and when federal agencies were deployed. Many such timelines also record when and how many victims were shuttled where. The meaning of such timelines is to narrate the story while appearing as objective as possible. Indeed, they report the facts- well-known incidents that occurred in a particular sequence (many with ‘updates’ at the bottom correcting misleading information). But just like any representation of the facts, some subjectivity shines through. The Brookings Institution is especially instructive for placing the end of the event at September 8, 2005, the day Congress approved \$52 billion in aid for recovery. The End.

For many of those displaced during Katrina, that wasn't the end, and August 29th or even the 24th wasn't the beginning of their problems.

Displacement and Resettlement as Adaptation Strategies

The Katrina incident resulted in 1.1 million evacuees over the age of 16 and at least 770,000 ultimately displaced. (White House, 2006) New Orleans is but a piece of the entirety of sending and receiving cities and towns that were impacted by the Katrina legacy, but it is instructive as the largest urban center that was nearly completely destroyed (80%) in the Gulf Coast. Indeed, other severe events (Great Chicago Fire, San Francisco Earthquake of 1906) have not had such a complete devastation.

New Orleans has a reputation for being "the most unique city in America," known for as being the best in the country for live music, cocktail hours, flea markets, antique shops, night life, "wild weekends," "girlfriend getaways" and cheap food, second only to San Francisco for gay-friendliness and second to Chicago for overall food and dining. (CNN, 2007) One would think that these qualities would attract Richard Florida's "creative class," but the lively city apparently cannot afford them. Pre-Katrina, in 2002, New Orleans ranked at the bottom of every "creative class" indicator including, surprisingly, tolerance. (Florida, 2008) Even after recent graduates swooped into town to fix it post-Hurricane, New Orleans still could not compete with the Top Ten Cities. (Florida, 2008) Indeed, the same people that said New Orleans offered great tourist amenities also ranked New Orleans on the bottom of the list for safety and cleanliness, and near the bottom for family entertainment. (CNN, 2007)

New Orleans residents are proud of the collective memory of their history as much as the history itself. As they say, New Orleans was New Orleans before America was America.

Founded in 1718, it was a destination for other displaced persons. Bones of Native Americans fleeing the Florida Seminole Wars have been found at today's Jackson Barracks military base. Haitians fleeing the 1804 Revolution, including whites (2,731) and their slaves (3,226) as well as freed blacks (3,102), took refuge in the city, doubling the French-speaking population. These histories are intertwined with current discourse and spectacle in the city and have informed the relationship between current residents and the displaced which we shall see later.

New Orleans was once the largest slave market in the nation, but it was also the largest and most prosperous community of free persons of color in the nation – individuals who were well educated, middle class and held property. Before 1900, blacks occupied the swampy areas of New Orleans. Colton (2002) describes the topographical separation of race in New Orleans through drainage, pumps and sewer mains. He argues persuasively that although there was low segregation in the antebellum period, Jim Crow laws in the 1930s limited the movement of blacks out of the sites of lowest elevation. While Progressive Era values (1880s-1920s) pushed for water and sewerage infrastructure that could only be made efficient by flowing through the entire city, municipal ordinances, deed restrictions and the systemic re-engineering of public works of the Jim Crow era forced minority communities to the areas with the poorest drainage, the flimsiest housing and the most inadequate public services. Instead of viewing these places as socially constructed by political action, however, occupants were stigmatized by the substandard physical conditions of their neighborhoods. (Colton, 2002) By the time of Katrina, these policies have left their mark on the city and black residents were still segregated to low lands, particularly the Lower Ninth Ward while poor whites lived nearby in equally low St. Bernard Parish.

By the time of Katrina, racial and poverty issues were prevalent in New Orleans. The 2000 Census reported that the population of Orleans Parish was 67% black, 28% white, 3%

Latino and 2% Asian. Public schools enrolled 95% minority students. (Urban Land Institute, 2006) Over 75% of public school students received free or reduced price lunch. (Urban Land Institute, 2006) Less than half (46%) of New Orleans residents owned homes. 27% lived below the poverty line. New Orleans had one of the highest rates of uninsured in the country, high rates of infant mortality and chronic disease such as heart disease, diabetes and AIDS. (Rudowitz, 2006) In fact, New Orleans had one of highest concentrations of people living with HIV/AIDS in America. (Robinson, 2008) This is a snapshot of what Katrina brought to the surface.

New Orleans suffered the largest population loss from Katrina, followed by Gulfport-Biloxi, MS, Lake Charles, LA, Pascagoula, MS and Mobile, AL. The majority went to Texas (61.1%) while many stayed in Louisiana (26.97%), although displaced persons found themselves in every state in the lower 48 and a few in neighboring countries. (FEMA, 2005) Studying the map below, we find that the majority of displaced persons evacuated within a 200 mile radius.

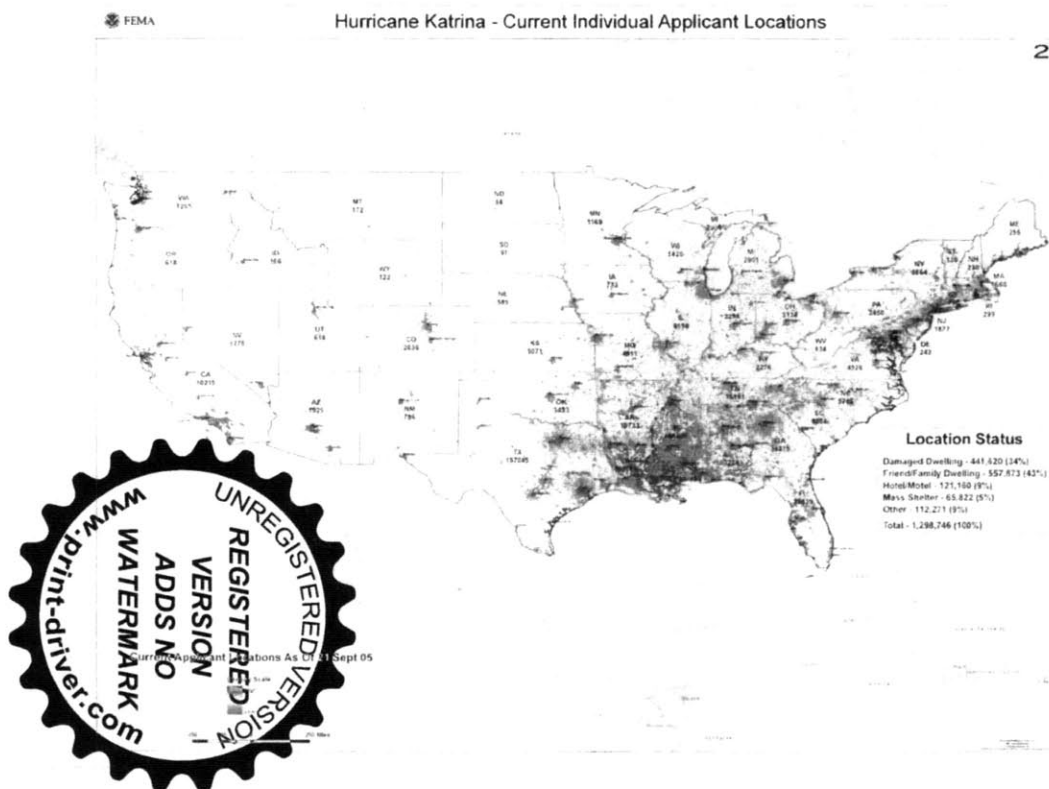


Figure 1 FEMA Displacement Map, September 2006

Among the displaced, John Barnshaw Projects Coordinator, of the Disaster Research Center of Delaware found that 79% surveyed reported did not have a friend or family member they were able to move in with until they got back on their feet. A Rice University survey found that 69% intended on staying on in Houston. (Dickerson, 2008) Back in New Orleans, demolished buildings and lack of jobs or services hindered voluntary return. A year later, only 40 of 600 physicians returned, and another 1,500 of the 7,400 other health employees resigned, citing no housing, child care or employment for spouses as reasons for leaving. (Berggren, 2006) An estimated 8,000 persons living with HIV/AIDS were displaced as no pharmacies were immediately re-opened in the area where they could find antiretroviral treatment. (Clark, et al, 2006) The public school system went from an enrollment of 65,000 in 2005 to 10,000 in 2006. (Urban Land Institute, 2006) Schools had already had a reputation for being among the worst in

the country before the storm, and could not compete with other cities. (Urban Land Institute, 2006) Many who could not afford to come back immediately found their new homes to be more comfortable than the old, or at least offered better opportunities for their children. During the 2004-05 academic year, for example 66,372 children were enrolled in Orleans Parish schools. By October 2009, Orleans Parish schools supported 38,051 students and this trend can be seen throughout the metro area. (Plyer and Ortiz, 2009) Today, New Orleans is experimenting with a charter school system to create flexible educational opportunities, with 60% of students in the charter schools. (Plyer and Ortiz, 2009)

In 2010, population remains more than 100,000 persons below pre-Katrina levels. The Census Bureau releases estimates through the Populations Estimates Program (PEP) that can offer an idea of how things have changed. However, it is important to note that both Jefferson and Orleans Parishes have indicated their intent to challenge these estimates. (Plyer and Ortiz, 2009) Metro area estimates suggest that the area is becoming less black (down 3.6 percentage points), less poor (down 4%) and more educated (residents with less than a high school diploma went down 6%). (Plyer and Ortiz, 2009) New Orleans homeowners are more likely to face unaffordable housing costs than elsewhere in the nation and renters face a more severe housing affordability crisis than the nation. (www.gnocdc.org)

The scale and tone of Katrina was new for America and led to a vibrant discourse on how to frame it. Scholars began to use the term diaspora (see, for example, see Ladd et al, 2006; Barnshaw and Trainor, 2007; Dickerson, 2008; Wailoo, 2010). From the Greek “to sow over,” diaspora conjures up the image of ripe dandelion whose seeds are cut off from the stem to find habitat elsewhere. For the seeds, the gust of wind is violent. Like the dandelion seeds, society

can either provide an untenable *rock* for the seeds to land or, or fertile ground to support their growth and survival.

Diaspora is problematic. Contemporary diaspora theorists have noted that unlike classical diasporas (Greek, Jew, Armenian), modern diasporic communities can and are often encouraged to return to their homeland. Displacement is seen as resulting from some social disruption in an otherwise stable state of normalcy. The displaced share similar characteristics with Cohen's diaspora criteria (2008): 1. Dispersal from original homeland, often traumatically, 2.

Alternatively or additionally, expansion from the homeland in terms of work or trade, 3.

Collective memory and myth about the homeland including location, history, suffering and achievements, 4. Idealized real or imagined ancestral home and collective commitment to

maintenance, restoration, safety, prosperity and creation, 5. Frequent development of a return

movement, 6. Strong ethnic group consciousness sustained over a long time, transmitted through

history, 7. A troubled relationship with host societies, 8. A sense of empathy for other diasporas,

and 9. The possibility of a distinctive, creative, enriching life in the host community. Several

similarities between this list and the experience of Katrina victims are apparent. In particular,

they were traumatically dispersed from what many considered their homeland. Some had

troubled relationships in their host cities revealed by newspaper reports of New Orleanians being

blamed for crime in Houston, while others found an enriching life in a new community with new

opportunities. Although many Americans might say that because they did not leave America they

did not leave their homeland, Button (2009) relayed testimony that many evacuees mourn their

loss of culture, even if they were relocated to another Southern city. Also, New Orleans groups

used empathy messaging to raise money for Haitians after the devastating 2010 earthquake.

Despite these similarities, I hesitate to use the term diaspora for this community because it

remains to be seen if classic elements will evolve, particularly if leadership will develop out of this community and if a collective commitment to the memory of the incident will stand the test of time.

Journalists reported on a 24/7 news cycle had to quickly create a label for the persons they were describing to the public. As Stephen Castles states: “Definitions reflect and reproduce power . . . it makes a big difference whether people are perceived as refugees, other types of forced migrants or voluntary migrants.” (Castles 2003). ‘Refugees’ are largely based on whether or not they have crossed an international border. In the Katrina case, most had not (although there have been reports of some going to Mexico). Yet, UNEP diplomat Essam El Hinnawi (1985) famously defined environmental refugees without the prerequisite of crossing a border:

environmental refugees [are] “...those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural or triggered by people) that jeopardizes their existence and/or seriously affected the quality of their life”

In the Katrina scenario, some were upset at the use of the term ‘refugee’ as it invoked for them weakness and incapability. Al Sharpton remarked: “These are not refugees. They are citizens of Louisiana and Mississippi, tax-paying citizens. They are not refugees wandering somewhere looking for charity. They are victims of neglect and a situation they should have never been put in in the first place.” (quoted in Kromm and Sturgis, 2008) The original intent of the usage was probably meant to reflect not *where* people went, but *how*. In other words, refugee invokes a sense of involuntariness. Of course, nearly all refugees could be said to have been put in a situation that should not have happened. But, legally, Sharpton is correct. Katrina victims who had not crossed a border should be considered internally displaced persons who have tax obligations. They do not enjoy refugee status, but should continue to enjoy their rights as citizens. For example, they should continue to enjoy their right to vote, a basic right that was

violated when local elections were held in New Orleans with only 30% of the population available.²

Another phrase often employed is “environmental migrant.” There is no definition of “migrant” in international law, only “migrant worker” under the International Convention on the Protection of Migrant Workers and Members of Their Families. The International Organization of Migration (IOM) has since modified El-Hinnawi’s definition of environmental refugees to define environmental migrants, but it is not generally accepted by the international community. (UN High Commissioner for Refugees, 2009) Also, it introduces a theoretical dilemma in trying to parse out the reasons for migration, when in fact they are often interrelated.

environmental migrants [are] “. . . *persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and move either within their country or abroad*”. (Brown, 2007)

In international policy, the term internally displaced persons (IDPs) is often used and accepted. Francis Deng penned Guiding Principles on Internally Displaced Persons that has been accepted by the United Nations. Perhaps the most important language in this definition is the criteria of not having crossed an international border. This distinguishes IDPs from refugees, who are protected under the 1951 Refugee Convention. (UN HRC, 2007). Sovereignty has frustrated international agencies in their dependency on states to admit them. Even so, some scholars argue that when the bond between state and citizen is severed in cases of internal displacement, IDPs need special human rights protection. Deng did not conceptualize IDPs as requiring special legal status, nor did he write that the responsibility to protect IDPs should be

² The State of Louisiana extended absentee voting throughout the state for the first time ever. However, residents located outside of the state were prevented from using the absentee ballot system.

shifted to the international community. However, he did envision human rights protection for IDPs.

“internally displaced persons [are] ...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.”

The phrase “internally displaced persons” (IDPs) is the most appropriate term for understanding the situation of those forced to migrate due to the Katrina incident and for conceptualizing their rights in terms of return. The strength in the definition lies in that a cause for displacement does not need to be determined. Thus, the struggle over defining a situation as economically-based or environmentally-based as is necessary in the refugee definition becomes moot. The UN Guidelines for Internally Displaced Persons codifies return as a human right – among others. For host cities, this is good news: they only have to provide temporary services for the population. Returning IDPs also places the burden back on the sending region. When forced displacement numbers in the millions, resettling populations elsewhere can lead to structural change. Returning people, on the other hand, is quantifiable and visible. It looks good on the reports. Returning home is less controversial on all fronts, especially when IDPs own clear land titles, and anyone opposing the idea could be seen as racist or undermining capitalist’s principles of individual will and self-interest. (Elhawary, 2009) However, return becomes tricky when the very land where people return can be considered dangerous. The line becomes particularly blurred when it unclear whether displacement occurred due to ‘natural’ activity or ‘human’ activity.

The international community has been struggling too with how to label persons who migrate to avoid perceived dangers from the environment. Moriniere (2009) shows through a

meta-analysis of 500 studies on environmental migration the evolution of terms to be precise in definition and in claim-making of persons forced from their habitat due to natural processes. Responding to natural processes through migration is not a new phenomenon. Indeed, forced ecological migration is what once culturally separated the ‘primitive’ nomadic peoples from ‘modern’ agricultural societies that sought to control the land. Reference to this can be seen in W. Peterson’s “Typology of Migration” label of ‘primitive migration’ defined as “resulting from an ecological push: a movement related to man’s inability to cope with natural forces.” (Morniere, 2009) Remembering the roots of philosophical thinking of modernity in distinguishing ‘civilized’ peoples by ability to be permanent will be helpful later in understanding the roots of policies that focus on return and rebuilding of destroyed areas as opposed to adapting through movement. Likewise, most scholarly works focus on societies that have traditionally been viewed as ‘primitive’ or ‘folk’ societies. Moriniere (2009) found in her review of the literature that the majority of articles used African locations as their case studies, followed by Asia and the Americas, with Bangladesh and Ethiopia the most referenced targeted countries. Environmental migration is constructed as a pre-modern phenomenon.

Walter Kaelin currently holds the position as the United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. Mr. Kaelin offers a typology of movement as adaptation strategies to environmental change:

1. Sudden onset: an example is the Hurricane Katrina
2. Slow onset: an example would be sea level rise and coastal erosion as experienced in southern Louisiana, this type can severely impact the economy
3. Sinking small island: an example would be Louisiana’s coastal islands like Eugene Island
4. High-risk zones: these are areas that are too dangerous to live in where people must be resettled with consent or by force. Typical examples are resettlement due to large dam development.
5. Unrest seriously disturbing public order, violence or armed conflict: this can occur especially in areas of water scarcity

This typology conveys the complexity of economic, environmental and social factors that surround displacement. (UN High Commissioner for Refugees, 2009) Kaelin calls for a vulnerability analysis to assess when vulnerabilities have reached such a degree that a person is forced to move. This paper is a direct response to this call, to understand the social and ecological vulnerability of the City of New Orleans and the Louisiana coast to begin to make decisions about the returnability of place. This ‘returnability test’ that Kaelin calls for must assess the permissibility, feasibility and moral reasonableness of voluntary return post-disaster. Authorities are obligated to provide durable solutions to resume lives, and if the land is inhabitable, their inaction could be called into question. Kaelin finds that governmental response to mass displacement is in general haphazard, discretionary and varies from country to country. (UN High Commissioner for Refugees, 2009) This paper attempts to offer a human rights approach to displacement as an element of adaptation measure. As part of the ‘returnability test’ to determine if areas in the Gulf Coast are reasonable for return, I will review what is occurring ecologically.

Katrina in Space

Hurricane Katrina hit a location that was not just socially, but ecologically, dynamic. New Orleans is subject to geologic and hydrologic forces that have a role in shaping human settlement patterns in the region. Human activity reciprocates and shapes physical patterns.

The end of the Mississippi is often likened to a water hose let loose. For the last six or seven thousand years, that water hose has been left with the valve open at Cape Girardeau, MO, once the southernmost point of what is now the United States. It spewed sediment, about 230 million metric tons per year, and created the delta we know and live on today. (Foster and

Giegengack, 2006) This is how the delta survives, with constant soil input of the north to keep pace with sea level. Not only that, but as the sediment travels down the river, the ingredients for the rich soil comes together. Plants contribute organic soil and nutrients, minerals contribute accretion and bulk density to form solid land, and iron precipitates toxic sulfides. (Day et al, 2006) Hurricanes, for their part, also participate in the natural process of moving land around. Hurricanes Katrina and Rita, for example, deposited 5-10cm sediment over large areas of coastland. Unfortunately for homeowners, another 100km² were converted to open water. (Day, et al, 2006)



Figure 2 Mississippi River Drainage Basin

Foster and Giegengack (2006) explain the specifics of how the River could divert itself to the Atchafalaya tributary, one of the more probable sites for a sudden shift. The Atchafalaya Bay is a distributary that discharges one-third of the Mississippi River. It is the only one that is not closed, and thus the only one that is growing delta. (Day et al, 2006) Although the Army Corps of Engineers is keeping it at bay, recent flooding has come close to overwhelming their engineering. (Foster and Giegengack, 2006) If that happens, New Orleans (along with Baton Rouge and other cities) will no longer have access to the river, thus no shipping industry. For Foster and Giegengack, it is not a question of “if” but of “when.”

The Mississippi Delta Plain, the mouth of the Mississippi River, has had net delta growth for the last thousand years until human activity reversed the trend. Almost completely leveed, the river is completely isolated from the delta, and sediment is jettied off two miles off the continental shelf and into the deep waters of the Gulf. In the national drive for economic growth, 15,000km of canals have been dredged for navigation, drainage, logging, but most importantly, oil and gas production, and this has altered the hydrology of the region. For geologists, this presents a dire, intractable situation: “We believe that the city will ultimately be doomed by the progressive deterioration of the complex environmental system of the Mississippi River and its delta.” (Foster and Giegengack, 2006).

The human-induced environmental stress to the Gulf Coast pre-dates Hurricanes Katrina and Rita by nearly 75 years, when the US Army Corps of Engineers dredged a canal to shorten shipping routes by 60 miles, saving time and money. This decision has economically benefited the entire nation as 57% of the US grain exports travels this route and 21% of waterborne commerce flows through southeastern Louisiana ports. (CWPPRA, 2006) Louisiana has five of the 15 busiest ports in the United States, a \$75 billion value. Louisiana’s wetlands produce 26% of the nation’s natural gas and crude oil supplies through 14,000 pipelines. In 2001, the federal government received \$15 billion in royalties and fees associated with oil and gas activities. Louisiana represents a \$96 billion total asset value for the United States. (CWPPRA, 2006) Clearly, levees and canals in the region was an economic success that supported local and national activities. But they have an environmental impact to the surrounding wetlands. What has made this area so popular might be the very thing that brings about its demise.

Levees built in the late sixties to protect the canal have eroded soil at alarming rates, through the geological effects of sloughing, or wave wash from passing vessels like cruise ships

and military vehicles, that erodes the banks. The widening of the canal due to erosion (at a rate of 15 feet per year as of 1999) creates a wider space for wind to blow over, which increases wave intensity. This ‘funnel effect’ was known as early as 1961 to have “effectively amplified the threat posed by a hurricane surge to the greater New Orleans area.” (Civil Action No 05-4182) By the early 1970s, the extreme loss of wetlands due to the project was visible by satellite. The image below indicates the 2005 shoreline in red imposed on a photograph of the shoreline in 1965.



Figure 3 1965 Aerial Photography showing 2005 New Orleans Shoreline. Civil Action No 05-4182 Appendix, Graphic No. 7B.

Biodiversity has been negatively impacted and saltwater has been intruding into the ground causing hardy vegetation to give way to that which was more susceptible to erosion. More importantly to this story, the vegetated barrier that offered a buffer between the Gulf and land has been severely compromised. In 2009, a Louisiana state judge ruled that the Corps was fully

aware that coastal habitats can reduce surge by a foot for every 2.7 miles. Yet, protecting the marine industry was more important than watershed management. By 2001, the total loss of marshland due to dredging and erosion was nearly 20,000 acres. (Civil Action No 05-4182)

After the levees failed during Hurricane Betsy in 1965, the Corps was found without fault, but plans were made to raise project structures by 1-2 feet nonetheless. But in 2009, a Louisiana state judge found that they knew as early as the 50s that the particular soils under the levees were prone to lateral displacement, or movement when loads – like levees- compressed them. Yet they added weight by elevating the levees, producing more displacement, even though the work was not completed forty years later when Hurricane Katrina went through. This weight caused some places to sink a foot and a half below the target level. (Civil Action No 05-4182)

The Corps has been found guilty in a court of law for not taking prophylactic measures, and refused requests made by Louisiana's Senators to improve the projects. Between 1968 and 1982, nothing was constructed. The focus of the Corps has been to guarantee the navigability of the channel despite impacts to the surrounding neighborhoods. Ironically, it was these very levees that made people and builders feel safe enough to develop here.

The Corps has not acted completely alone. Any development of infrastructure must be approved by and in concert with the state and local authorities. The Army Corps sought to induce New Orleans Sewerage and Water Board to install floodgates at the end of the drainage canals. (Birkland and Waterman, 2008) The floodgates failed, so the Corps built floodwalls that were known to be structurally deficient. (see van Heerden and Bryan, 2006)

Ecology of Risk and Disaster

Oki and Kanae (2006) list seven ways in which the hydrological cycle is expected to change over the next century due to climate change, something that is critically important to understand when studying a massive watershed like the Mississippi River Gulf Outlet. 1) Rising temperatures will accelerate water cycles by melting glaciers and turning snowfall into rainfall. 2) Climate change will shift the seasons, melting snow earlier and significantly changing spring floods. 3) Climate change is also expected to cause increases in extreme weather events, so some regions will experience times of too much water and times of too little water. In other words, the temporality and spaciality of water cannot be controlled. 4) Increased velocity of weather events will reduce groundwater recharge while increased human consumption will draw down fossil water in aquifers. 5) Increased velocity will also cause soil erosion and compromise the integrity of the water as it discharges to the sea. 6) Global precipitation will increase significantly more than evapotranspiration because rising CO₂ levels induce stomata closure which reduces transpiration. Both of these factors will lead to increased discharges to rivers as precipitation outruns evapotranspiration. 7) Finally, water resource management plays a role in the hydrological cycle, although these social factors have not yet been fully measured. The impact on the Mississippi River watershed is enormous.

Scientists have predicted the link between global temperature rise and hurricane intensity, frequency, and changing locations of occurrence for at least two decades. (Emanuel, 1987, Knuston, et al, 1997) The global average temperature of the earth is rising, and likely to exceed 2°C (unevenly distributed) by the end of this century. (IPCC, 2007) For a sea surface temperature warming of about 2.2 degrees Celsius, simulations have shown that hurricanes were more intense by 3-7 m/s (5-12%) for wind speed and 7-20 millibars for central surface pressure.

(Knuston, et al, 1997) These simulations were shown for shown for storms in the northwest Pacific Basin, but tropical cyclones in low pressure places that are partially enclosed basins, such as the Gulf of Mexico, might be even more effected by global warming. (Emanuel, 1987) The dynamics of tropical storms are even more crucially dependent on sea water temperature, and sometimes permit them to achieve maximum intensity that is energetically possible. In some places, where sea water temperature increases, the maximum destructive potential can increase by 60%. (Emanuel, 1987)

Society has collected enough information to explain the causes of climate change and predict its effects. Yet, the human activity responsible for this remains unchecked. Sharp disciplinary distinctions between the natural and social sciences have prevented crossover that can lead to theorizing about realistic sustainable behavior. Instead, human behavior is reactionary. It is Herculean for one individual to be an expert in several disciplines, but people who have the means should educate themselves on the ecological well-being of the place they live – because our disconnection with the land forces us into a space where a conscious effort has to be made. Not doing so has dangerous repercussions. Not understanding what is going on in the environment can catch us off guard and unprepared in crisis situations.

Chapter 2

Theories of Disaster and Displacement

The previous section intertwined human activity with natural processes to show how “Katrina” is as much a man-made “development” or “technical” disaster as it was an “environmental” disaster. It transcends time, as the event of the hurricane was mired in the past, continues in the present, and sets the stage for the future. It transcends space, as the Mississippi watershed encompasses the majority of the continental United States, regional oil represents economic value for the entire country, and the local shipping industry exports food to the world. This scenario is placed on an ecologically dynamic landscape that is still building, destroying and rebuilding itself. Upon learning of the complicated social and environmental factors involved, one may begin to wonder if large human populations should return to this area, and if so, how. In this chapter, I will look to sociological theories to better understand the crux of this paper – the right to return, and how the lives of all humans are bound up in the lives of the displaced. Here we look deeply into the foundational ideologies of society and how this framework informs our decisions.

Sociological Theories

Geography, geology and climate change continue to be largely absent from social theory. Peacock, et al (1997) first began to put these ideas together in their analysis of Hurricane Andrew, taking a socio-political ecological approach to understand natural and human landscapes as social production and material expressions of political-economic forces. While sociologists began to develop a way of thinking about this in the 1970s, interest waned and is only now becoming more useful to frame disasters that reveal underlying socio-political and

economic inequality. The tradition of Marx forms the foundation for new developments in political ecology. Marx (responding in part to Malthus) began his discussion on forms of social exchange with the insight that commodities are the product of both nature's materials and human labor. (Plumwood, 2003; Dickens, 1992) Marx himself went on to focus on labor, but he was clear in that the organism (humans) and the environment are dialectically dependent.

In the 1980s, Catton and Dunlap were the first to develop a theory using a Marxist foundation to respond to the growing pressure of humans on the environment. (Dickens, 1992, Catton and Dunlap, 1980) To analyze the current hegemonic ideology that structures our way of thinking about our relationship with the environment (and everything else), they outline four characteristics of what they call "the dominant Western worldview," reflecting the global spread of the Western project of market-based systems through industrialization married with liberal democracy. This "dominant Western worldview" is an unspoken philosophy that 1) humans are a fundamentally distinct species, and are the highest over all others in a vertical hierarchy; 2) humans have control over our destiny; 3) the world and resources are infinite; and 4) the history of humanity is a linear progression. (Catton and Dunlap, 1980) They call for a New Environmental Paradigm, one that deconstructs this systems-thinking and reconstructs one that resolves human existence within a finite, socially constructed niche. Oliver-Smith (2009) poses that vulnerability is essentially a political ecology concept, claiming it forms the "conceptual nexus that links the relationship that people have with their environment to social forces and institutions and the cultural values that sustain or contest them." It is with this intention that I frame the human rights of environmentally displaced persons. Changes to environmentally vulnerable regions will impact the lives of socially vulnerable persons.

In this paper, I attempt to bridge social and environmental disaster. In a similar way, Button (2009) recently called for bridging of development forced displacement and resettlement theory (DFDR) with disaster theory. As we have seen in the previous chapter, Katrina was as much about urban development as it was about natural processes. It is important to understand how this relates to displacement. In particular, Button (2009) saw similarities between the development-induced displacement and disaster-induced displacement in regards of their long-term effects on materiality and culture as well as similarities in the characteristics of victims: the dismantling of families, adaptive stresses, loss of privacy, political marginalization and the need to reconstruct status, family and community. (Button, 2009)

Sociologists have long addressed challenges in urban development and a niche group has established itself in disaster theory, but they have remained largely separate. Tierney (2007) explains that disaster theorists tend to isolate themselves because their objective is to respond to policy maker's interests instead of expanding theory. She outlines how disaster theory evolved within the sociological framework, beginning with debunking myths that disasters have no positive effects to current thinking opening the social construct of disaster to include the political economy. United States disaster researchers in the forties and fifties studied disaster in the context of the threats of the Cold War and nuclear attack. Their analysis began with the incident labeled disaster and ended when responders left the scene. Tierney (2007) shows how this myopic view persisted until very recently. Disaster research in the sixties were funded by institutions and responded to the social context of civil unrest and demonstrations. The Disaster Research Center, established in 1963, published works explaining how disaster produces organizational adaptation, innovation through crisis, and community morale. Tierney (2007) explains how disaster research has since been marginalized in sociology because of its

mainstream and institutionalized nature. Instead of challenging the status quo, disaster research has often attempted to explain extremes as event-based that disrupts normalcy and requires adaptation. Hewitt (1983) was among the first to contest the idea that a disaster is an 'event.' Tierney (2007) prefers the term 'occasions.' Events, for her, temporally constrain the narrative into a narrow timeframe. This is one reason I refrain from using the term Hurricane Katrina and instead prefer just Katrina as a word that has come to encompass the full temporal and spatial context.

Tierney (2007) invokes the concept of the urban growth machine to explain how our modern regimes of production and accumulation deplete environmental resources making communities more vulnerable in the face of extreme events, designing what she calls "the disaster of the future." The idea of the urban growth machine, or growth for growth's sake, is consistent with rebuilding and recovery rhetoric in New Orleans. Indeed, Louisiana is said to have advertised one of the most blatant growth machine messages; is said to have once advertised: "Nature made it perfect. We made it profitable." (quoted in Logan and Molotch, 1987) Logan and Molotch (1987) were the first to develop the concept of the urban growth machine to emphasize that urban place "is a market commodity that can produce wealth and power for its owners, and that this might explain why certain people take a keen interest in the ordering of urban life." Growth is a consensus-building activity among elites. It is the one shared value among disparate interests. Logan and Molotoch (1987) left the opportunity open that under extraordinary circumstances is this consensus endangered. However, in the Katrina case, it appeared that the extraordinary circumstance bound elites together, and any dissenting voice was ignored. Consideration of building a new city further from the coast and preventing return in the

most vulnerable areas was not apparent. Instead, increases in population are equated with local progress.

In Logan and Molotch's analysis, the growth machine supports any cultural institution that can play a role in building locality. New Orleans used the development of the Superdome to set the stage for a tourist-based growth strategy for the future development of downtown, absorbed by the state government. Not surprisingly, the Superdome was one of the first buildings to be rebuilt, before public housing, hospitals and most public schools.

Logan and Molotch (1987) quote Sundquist (1975) to underscore precisely the impact the urban growth machine has on an individual's decisions: "What is called 'freedom of choice' is, in sum, freedom of employer choice or, more precisely, freedom of choice for that segment of the corporate world that operates mobile enterprises. The real question, then, is whether freedom of corporate choice should be automatically honored by government policy at the expense of freedom of individual choice where those conflict." If value-free development is false, then individuals do not have the full gambit of information available to make rational choices about returning, rebuilding in a different area, or resettling in another established city.

Disaster Research Theories

Fritz (1961) attempted to define disaster as a disruption of 'normal' life that required adaptation by those displaced. The state was responsible for returning place and community to 'normal.' His famous definition went unchanged until very recently, defining four core dimensions of disaster: where events and impacts determine the social units (communities, regions) and responses. Later, researchers inverted the relationship of the variables – where social units determine events and impacts. (Kunreuther, et al, 1978; Turner and Zedlewski, 1980)

Kreps (1984) recognizes disasters for its rich data in addressing basic questions about social organizations, their origins, adaptive capacities and survival mechanisms. Instead of being abnormal, disruptive events, disasters are normal. They are common occurrences that are products of the society in which they occur: industrialization, urbanization, globalization, legacies of colonialism and slavery, and mechanism of control exercised over the environment and civil society. (Kreps 1984; Hewitt, 1997; Pelling, 2003) Stallings (2002) also recognizes that disasters provide opportunities for researchers to study the social processes and structures that underlie everyday affairs.

Hewitt (1997) explains the dominant view of how disaster is socially constructed by authorities and the media. Disasters are either a result of forces out of societal control or else accidents. Instead of encompassing the full range of contributing factors, questions of risk ask how, when and where, not why or whom. Places are treated as isolated islands of abnormality where society's rules do not apply. In this way, disaster is confined in space, reducing both the risk and responsibility to other members of society. In Katrina, we can see this in how the uniqueness of New Orleans' very real racial and socio-economic composition was emphasized over other factors that could make it look similar to other cities. New Orleans shares commonalities with other cities like a transportation plan that favors cars over alternative modes, racial segregation or overuse of natural resources in the name of building the economy. Comparing the similarities to other cities could have made it seem like this could happen anywhere, and would force city leaders to re-evaluate their own relationship with the marginalized and with the environment. In the dominant view of disaster, 'normality' that was disrupted should be restored, usually through technical means. In New Orleans, rebuilding is now the only approach on the table, with alternatives swept by the wayside. In the dominant

approach, disaster can be mitigated by using the latest science and technology. This too is seen in New Orleans today as the Corps rebuilds the levees to better standards, city planners flock to give input on improved plans, and FEMA funds primarily construction and debris removal. Long-term social infrastructure, like salaries for teachers or nurses or small business loans to support the economy, are overlooked as mitigation measures.

Decreasing the distance between the rich and poor is not seen as mitigation to future disaster despite evidence that poverty was one of the primary drivers of the chaos that ensued. Non-structural solutions like coastal restoration take a backseat to large-scale, expensive physical infrastructure. Finally, the dominant perspective assumes that all results are measurable and can be quantified. This is reflected in the many analyses of Katrina (not excluding this one) that relies on statistics to tell the story. Hewitt (1997) describes this in terms of the hazards perspective, in that it “focuses on conditions and processes that are or can be direct causes of damage, categorized by natural, tech, biological or social, a view of risk as controlled by these agents.” We shall see that these characteristics will become familiar when we look at the Stafford Act in the next section.

Theory into Practice – Return, Resettlement, Dignity

Dilemmas can arise when it comes to putting these ideas into practice in the interest of returning those displaced from disaster to their homeland. Upon learning about the complex ecological dynamics, one might come to the conclusion that it would be safer to restore the hardest hit areas to wetlands and resettle those neighborhoods elsewhere. Anthony Oliver-Smith (2009) is careful to point out that CFDR is possible, or conservation-forced displacement and resettlement. In other words, if authorities or social group who could attain power could close off

an ecologically vulnerable territory to human activity, that action has the potential of forcing locals to abandon their land. In the Katrina case, this was a real concern in the Lower Ninth Ward, a neighborhood that is below sea level, was one of the worst hit, and has been traditionally segregated from the rest of the city with a vast majority African American population with a high incidence of poverty. Because the area would have been a prime candidate for high intensity conservation efforts, social movements rushed to bring people back to these areas. While “conservation” often presents a rosy picture, it is highly racialized. For example, Vankatesh (2006) points out that in the mid 1990s, blighted white communities received conservation funds for housing, parks and streets, while in black neighborhoods the funds were coded as “urban renewal” and “eminent domain.” Hence, from a human rights perspective, and perhaps as a technique to avoid repeating the nineties, rapid return to the Lower Ninth was construed as an appropriate response to treat internally displaced persons with the utmost dignity. But principles guiding treatment of IDPs were written primarily with war and violence in mind, not quite considering the fact that actual land where the families once lived might not remain tenable. Isn’t just as racist, just as much of a human rights violation, to return people to a known danger? As Cass Sunstein (2005) recommends in applying his Anti-Catastrophe Principle, “1. Move as many people as possible out of harm’s way. No technical fix will ensure the safety of residents in the Lower Ninth Ward. These and other low-lying areas should not be repopulated, despite the obvious wishes of the city’s residents.” This conclusion clearly imposes significant economic and political burdens on the process of relocating former residents, but that would minimize the loss of life in a future flood after a Katrina-like event. An alternative, which has been suggested by some commentators, would be to reconstruct houses with their living spaces above the likely high-water line in future floods.” What Sunstein is referring to is that although the canal break is

what destroyed the Lower 9th in Katrina, future disaster will be caused by its placement as one of the lowest points in the city. Vankatesh (2006) notes the irony of the suggestion of moving poor blacks to higher land: even the Urban Land Institute was too afraid to suggest adding affordable housing in Uptown. It is apparently more politically expedient to put poor blacks in harms' way than it is to "waste" high-value (read: high-priced) property on them. Foster and Giegengack (2006) politely express the need for evacuation plans. Less politely, I argue that it is a violation of people's right to life to allow people to live in a city without a tested and well-communicated evacuation plan. Geographic location must be untangled from the interpretation of the right to return.

Table 1 Selected Political-Ecological Timeline

Global Affairs	National Developments	U.S. President	Federally Declared Emergencies	National Disaster Policy	NOLA Developments
	Progressive Era 1880s-1920s			Congressional Act of 1803	1718 French settlement
	Jim Crow 1876-1965		1927 Mississippi River Flood		1902 oil discovered
WWII 39-45		Roosevelt 33-45		1803-1950 128 laws on disaster relief signed by Congress	1910-1930 municipal ordinances, deed restrictions contribute to urban racial geography
UN charter, signed 1945		Truman 45-53		1950 Federal Disaster Relief Act Public Law 81-875	1930s flood protection barrier development to Lake Pontchartrain
UN Declaration of Human Rights, 1948		Eisenhower 53-61		1956 National Flood Insurance Program	1947 Fed authorizes levees, converts 960 acres to "productive use", 47,000 housing units added to Jefferson Parish; 29,000 units to Orleans Parish
Cold War 1947-1991		Kennedy 61-63	1964 Alaska earthquake		
1949 1 st Soviet nuclear weapon test		Johnson 63-69	1965 Hurricane Betsy		
1969 Race Covenant, effective	60s civil unrest				
	New Federalism		1969 Hurricane Camille		
			1971 San Fernando	National Flood Insurance Act of 1968	1956 MRGO authorized by Congress Public Act

1970s Peak Oil		Nixon 69-74	Earthquake	Disaster Relief Act of 1969	84-455
1976 Economic Covenant, effective		Ford 74-77	1972 Hurricane Agnes	1972 NFI Act strengthened, insurance required in floodplain	Superdome breaks ground 1971, opens 1975
1976 ICCPR effective			1974: 3 tornadoes in 10 states, 6 federal disaster declarations	Disaster Relief Act of 1974	
1981 CEDAW, effective					
1989 Rights of the Child, effective		Carter 77-81	1980 Mount St. Helens	1979 FEMA established	
		Reagan 81-89		1985-89 Julius Becton appointed FEMA director	
Gulf War				1988 Stafford Act Public Law 93-288	
		G. Bush 89-93	1989 Hurricane Hugo 1989 Loma Prieta earthquake		
			1992 Hurricane Andrew	1992 Federal Response Plan	
1998 UN Guiding Principles on Internally Displaced Persons, presented		Clinton 93-01		1993 James Lee Witt, FEMA director	
				1993 Stafford amendments added	1990 Act: Senators John Breaux and J.

Iraq War Terrorism		G. W.Bush 01-08	9/11 4 hurricanes in FL Hurricanes Katrina, Rita, Wilma	1994 Mitigation Directorate	Bennett Johnston acquire first stable source of federal funds for coastal wetlands
				1997 Project Impact	
				2000 Stafford Act amendments added	
				Michael Brown, FEMA director	
				Dept. of Homeland Security Act of 2002	
				National Response Plan, early 2005	
				Post-Katrina Emergency Management Reform Act of 2006	
		Obama 09-present	National Response Framework	Superdome reopens Sept 24, 2006	
			National Recovery Framework, on Obama’s desk April 1, 2010	Saints win Superbowl 2010	

Chapter 3

Right to Return and the Robert T. Stafford Act

The Stafford Act is the document that authorizes FEMA to award grants in instances of federally declared disasters. As such, it is the centerpiece of domestic disaster policy. It was signed into law in 1988 to establish a process, coordinate state, local and federal agencies in a disaster, and appoint a Federal Coordinating Officer. The Act is designed to outline the role of the federal government in doing what individuals are not best positioned to do themselves, and to do what states cannot and should not do, such as national security, foreign affairs, and interstate commerce. (White House, 2006) The underlying principle is that the state and local governments are the first responders in disasters of all sizes. This sentiment is underscored in President Truman's 1952 Executive Order 10427 emphasizing that the federal government's role in disaster relief is to supplement, not supplant the state and local governments' authority to manage disaster. This is founded on the premises that 1) locals are literally the first to become aware of a crisis situation and are therefore the first to respond, and 2) that state sovereignty prevails and limits federal intervention. In this section, I attempt to understand how FEMA officials interpret the Stafford Act in practice.

To do this, I interviewed four FEMA officials in different departments on the role of the government in returning or resettling the internally displaced after a disaster. My interviews were with 1) Marc Roy [MR], Chief of Staff of FEMA in the State of Louisiana at the time of Katrina, 2) Mike Karl [MK], Acting Deputy Director, Programs DHS/FEMA Baton Rouge Area Field Office of the Louisiana Transitional Recovery Office, 3) Eddie Williams [EW], Public Assistance Officer, a local who took the job shortly after Katrina because he wanted to return and his former employment was no longer available, and 4) Charles Schexnaildre [CS],

Individual Group Supervisor for Louisiana Transitional Recovery Office, a native who took what he thought would be a temporary position that lasted five years.³ In this section, I use quotes from the interviews to help narrate the story of how FEMA interprets the right to return.

The evidence suggests that the Stafford Act, rooted in federalist principles, encourages FEMA to assist in rebuilding challenge that premise in light of globalization creating global problems, and the strengthening of global information. Evidence from Katrina shows that locals were among the last to know of the true extent of the disaster until it was too late.

Before this document came into effect, the federal government had intervened in some disasters. An urban fire in Portsmouth, New Hampshire was the first federally declared disaster in 1803. From 1803-1950, the federal government intervened in over 100 disasters. (White House, 2006) The document outlines the authority of the President of the United States to have discretion to declare an occasion a federally declared disaster, but only at the request of the Governor of the State. Adjustments to the policy have been reactive. In other words, Congress has traditionally made amendments to the Act after major events challenged its effectiveness.

FEMA disburses funds in three areas: individual assistance, public assistance and hazard mitigation. Grants can be awarded to local governments, American Indian tribes and certain profit and non-profit organizations to recover from presidentially declared emergencies and major disasters. (44 CFR 206.222) The three non-profits that are federally recognized charities are the American Red Cross, the Salvation Army and the Unitarians. There are eleven federally recognized tribes living within Louisiana borders: the Chitimacha Tribe, Coushatta, Tunica-Biloxi, Jena Band of Choctaw Indians, Caddo Nation of Oklahoma, MBCI, the Quapaw Tribe of Oklahoma, the Alabama Coushatta tribe of Texas, Choctaw Nation of Oklahoma, Seminole Nation of Oklahoma and the Seminole tribe of Florida. (Gulf Coast HMGP PA, 2007)

³ A detailed narrative of the research process can be found in Appendix 1.

Specifically, the program provides assistance for debris removal, emergency protection measures and permanent restoration of infrastructure.

When the President declares an emergency or major disaster, public assistance is authorized. All applicants must go through a Grantee (usually the state) by submitting a Request for Public Assistance FEMA Form 90-49. The Basis for Public Assistance is the PW, public worksheet, which documents the details of the project and the logical grouping of the work required as a direct result of the disaster. Small projects may be awarded to grants up to \$55,000. Large projects are arbitrated at \$500,000 or more. This line is significant in accountability practices, as small grants often go untracked for minority and women-owned contract regulations.

FEMA must comply with all federal regulations, but the important ones regarding the environment are: Record of Environmental Consideration, NEPA (National Environmental Protection Act), NHPA (National Historic Preservation Act), Endangered Species, Coastal Barrier Resources Act, Clean Water Act, Coastal Zone Management Act, Fish and Wildlife Coordination Act, Clean Air Act, Farmland Protection Policy Act, Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, and the Wild and Scenic Rivers Act. Actions also receive a compliance review under Executive Orders 11988 (Floodplains), 11990 (Wetlands) and 12898 (Environmental Justice for Low Income and Minority Populations.) The documents listed above are considered guidelines, and not law.

Under the Stafford Act, Sec. 102 Definitions (42 U.S. C. 5122), “emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the

United States.” A “major disaster” is defined as: “any natural catastrophe (including hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquakes, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. FEMA has jurisdiction to act under the Stafford Act in the fifty United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands. Hence, the Act must be general enough to cover extremes in cultural and ecological variability. It is FEMA’s job to interpret the Act and disburse funds in a way that is equitable, secure (to reduce scams) and appropriate for the region. Yet, no matter how much preparation is done on paper, the human factor presents a wild card.

MR: It doesn’t mean everyone’s going to do what they’re supposed to. It’s not like reading a script in one of these disasters.

But Mr. Roy is confident that FEMA employees have learned from past mistakes.

MR: But, I guess I could say it’s a framework, the framework is there. And most everybody knows the rules now. They know where their supposed to plug in, so if there’s a glitch, it shouldn’t be a permanent one, or one that throws everything off kilter, which happened in Katrina. We had people [in Katrina] who wouldn’t talk to each other, and parishes wouldn’t talk to the Feds and Feds wouldn’t talk to the state, and there were all kinds of problems in that regard.

One lesson learned is that the chain of command in the National Response Plan was inefficient. The chain has been changed in January 2008 to manage the fragmented system, clarify roles, establish the position of the Joint Field Officer as a one-stop shop for adaptable response and underscore the local community as the first and last responsibility. Yet, there are foundational limitations to federal involvement that present challenges to protecting human rights on the

ground level. Five principles of the Stafford Act as federal officials understand them stood out from the interviews: 1) the style of federalism that leaves response primarily in the hands of the state; 2) rebuilding and return based on individual choice; 3) physical infrastructure prioritized over social infrastructure; 4) mitigation comes last, not first or even during a crisis; and 5) it is reactive instead of proactive.

Principle 1: Federalism

The main theme that emerged from my interviews was the concept of federalism. All respondents adamantly supported the idea that the Stafford Act protected the rights of the state from the federal government intruding. Title III of the Act outlines that the Governor must ask the President for assistance before the federal government can intervene in a crisis. My respondents interpreted this as a style of federalism that gives primary responsibility for response and recovery to the local government. The federal government is seen as a “back-up” if the state does not have the resources to fully respond. In this way, the federal government has less control over what each state decides to do.

Birkland and Waterman (2008) argue that the style of federalism underlying US disaster policy was the reason for failure during Katrina rather than federalism itself. They explain the style of federalism as opportunistic which allows and even encourages actors to pursue immediate interests with little regard for institutional or collective interests. As an example, they remind us that Congress’ decision to move FEMA into the Department of Homeland Security did not take into account the existing hierarchy, and some officials were upset to find their role redefined. (Birkland and Waterman, 2008) With Ford in office, 1974 was an era of “New Federalism” in which decision making was left to the states, while the federal government retained funding functions, known as “shared governance.” Shortly after, in 1979, FEMA was

created under Carter. When Reagan took over, FEMA's mission was to prepare simulations for nuclear war. The focus was not on natural disasters. In fact, Julius Becton, FEMA director at the end of Reagan's presidency (1985-89) ranked earthquakes, hurricanes and floods at the bottom of program priorities. (Birkland and Waterman, 2008). By the time the Stafford Act was signed into law, in 1988, it was made clear that natural disasters were local events that local governments were primarily responsible for as first responders on the scene. Historically, local governments in the late 19th century and early 20th century were hesitant to get the federal government involved too because it conflicted with the goals of boosterism in persuading people to move to their new city. The federal government would extend aid if the emergency warranted it, but the federal role was mainly to encourage state and local governments to coordinate, plan, protect themselves, and mitigate. Title III of the Stafford Act clearly states that the President cannot order any federal agency to penetrate state boundaries without the specific request of the Governor. The ultimate responsibility lies with state and local actors.

Birkland and Waterman (2008) refer to this history in their assessment of the Katrina legacy. They maintain that because the Stafford Act is based on this style of federalism in which the state and local governments are ultimately responsible, then the federal government is largely off the hook. They deride the media for blaming the federal government for every incident that had occurred. Journalists distort the truth for commercial reasons to be sure, but I argue that Birkland and Waterman are missing a major point. They ignore that the federal government has the power to make the rules and that those in power make the rules to suit their interests. Birkland and Waterman (2008) point out that there is a political utility of disaster aid that works in the federal government's favor: that they get all of the credit for helping states in crisis. Meanwhile, they do not have to take any of the responsibility.

I challenge the notion that just because the law is written to be federalist and that the government acted in a federalist way that they should be let off the hook. I challenge this on two main levels that is the basis of my thesis. First, I maintain that not all disasters are primarily ‘local’ ‘events’. For example, consider that displaced persons end up scattered across territories. Or, consider the global nature of root causes of disasters such as climate change, terrorism or war. The notion that locals are the first to respond to an event is flawed too given that sometimes, and in the case of Katrina, persons in the federal government were alerted to the danger before residents. Second, as a member of the global society, the United States is party to international treaties and customary norms that are shared values recognized by the member nations of the United Nations. Under international law, anything that happens within a nation’s boundaries is the ultimately the responsibility of the nation-state. In this paper, I will categorize each Katrina incident in violation of international human rights treaties to demonstrate that the federal government, as a global participant, is ultimately responsible for activities that occur within their borders.

A common mantra in FEMA, and indeed the risk management community, is “all disasters are local.” This focus on the local makes sense when looking at common emergencies declared as federal disasters like earthquakes, wildfires and flooding. They rarely cross state boundaries, and when they do, they don’t normally impact more than a few states at a time. Yet, the principles of the Stafford Act are steeped in such global issues as the Cold War and terrorism, and many policy changes were direct results of these global crises.

Table 2 Selected Disaster-Related Policies Influenced by Federally Declared Disasters

Federally Declared Disaster	Influenced Policy
Cold War, threat of nuclear attack	FEMA established 1979 (Witt, 2006)
9/11	2002 Homeland Security Act 2003 Homeland Security Presidential Directive 5 (HSPD-5) (created NIMS and NRP) (White House, 2006)

Still, FEMA as an agency interprets the Stafford Act as placing the burden of responsibility on local communities. This is hazardous when we consider that in the global age of technology and information, global actors may have quicker and more accurate information than those on the ground. The day before the Hurricane Katrina hit New Orleans, for example, many residents went about their daily business while national authorities were discussing the potential danger.

Principle 2: Rebuilding and return as individual choice

In this section, I argue that the federal government influences human settlement patterns with monetary compensation to homeowners, insurance subsidies and risk mapping. These are indirect ways of influencing human behavior because to be in line with American values, you cannot directly tell another person what to do, or else they might consider it coercion. Culturally, the ways to incentivize them to engage in sustainable behavior are to provide them with meaningful information that suggests the correct behavior and to use market-oriented approaches that send value signals through price arrangement. Even so, FEMA does not necessarily use the insurance program to convey information to individuals.

CS: It is not necessarily that we say, ‘don’t rebuild in a certain area,’ just do it the way we recommend to do it and the state recommends to do it and the insurance recommends to do it, because it does help. It makes a huge difference. Obviously there are certain areas that, on a

personal level you can say, 'What in the world are you thinking rebuilding right there?' It's not the federal government's role to say, "hey you know what, we're not going to assist," or 'we don't think, we'll tell insurance companies not to cover you...' It's not our role to say where you can live and not live. If the state wants to go down that route, that's the state's business. We can say it is extremely risky to live in that area, extremely dangerous and we are going to require certain things to be met, but ultimately we can't stop you from doing it if that's what you want to do.

One might argue that the federal government can have more control over influencing behavior change through market-based systems like insurance. The government, for example, doesn't have to bar a person from building on land, but if that owner cannot obtain insurance, they are less likely to do so. FEMA has some control over insurance mechanisms through subsidization of state programs that aid homeowners in high-risk regions. One major high-risk is the V-zone, or velocity zone, a term given to an area inundated by 100-year flooding with velocity hazard (wave action).

CS: In Louisiana the Louisiana Citizen's Insurance is the insurance of last resort. If no one else will provide it, the state will provide it. The V zones are extremely tricky here, and a huge debate here. There's not even an agreement on what the V zones are. In Louisiana, it is probably worse than anywhere in the country, because [the residents in the V zone] are not going to move. They're fishermen. They don't have the ability to move 50 miles inland; they work offshore. We have V zone discussions with the state on a daily basis, both on the individual assistance side and on the public assistance side.

Because new information is gathered almost daily, what was once a 'safe' (read: insurable) place to live may change status. Residents are expected to be kept up-to-date of this information and respond as a rational actor. For the federal government, returning or not returning to the new conditions is a decision the individual alone must make.

CS: I'd say on the federal level, the responsibility is strictly to give that short term assistance. To give them the option [of return]. Beyond that, it is up to the individual. Personal responsibility plays a huge role in everything we do. From the very beginning all the way through now, we preach to our families that still live in units, "Personal responsibility is key."

The irony is that the information collected and distributed by the federal government is designed for municipal use. By trying to inform city planning around high-risk zones, the government recognizes that people are influenced by other factors than just individual will – people will be less likely to locate in areas lacking in amenities such as hospitals and schools. The government’s insistence that a person’s right to live wherever she wants is the whole truth. The government can and does use indirect means of influencing human settlement patterns.

EW: ...the federal government develops the [multi-hazard advisory] maps, to hopefully provide enough information and guidance to parishes and municipalities so as to ensure that people are not put in harm’s way, so infrastructure is not put in harm’s way.

Yet, this information hardly trickles down to the resident in order to make an informed decision about the changing risks associated with their region, and certainly power differentials of access to such information can be imagined.

MR: And the right to return, there is no constitutional right to return. And, at least to public housing, and there’s no real right to return to your own house. *Unless you can make it ultimately safe yourself.* And the Road Home grants, and LRA projects here provided people with mitigation funds and others, I didn’t get any, but you had some evidence to build back, but the ultimate choice is the individual I think. (my emphasis)

Here again, the right to return is assumed to mean to return to a specific geographical location. *How* a person returns, for example, with dignity (which will be fleshed out in the next chapter), is not a part of the federal government’s concept of return.

MR: There is no constitutional right to live where you want to live, and if something’s destroyed you don’t have necessarily a right to come back. The argument was made by some folks that they wanted to return to the HANO units, the Housing Authority of New Orleans, which has now been taken over by the federal HUD. They want to go back to the HANO units that they had been in, or that their parents or grandparents had lived in. So they’ve been in the same flat, or apartment, in a HANO unit, for a generation or two. The argument was made, “well that’s ours, it should be rebuilt,” and the decision was made to bulldoze it. But it had a legal basis, not just that these were crumbling units in terrible condition, that they were over 50% damaged, but the legal basis is that you don’t have a right to public housing, nor do you have a right to government help to come back.

The assumption is that people want to return to the exact location they previously inhabited. While that certainly may be true for some, it can hardly be considered much of a “choice” if the options to choose from are limited to 1) move to an unfamiliar place with little or no support or 2) move to a familiar place with little to no support.

I argue that a greater value on human dignity should be considered as an opportunity to “nudge”⁴ people to move to ecologically safer areas. The federal government has a unique opportunity in disaster situations to influence people to locate outside of ecologically vulnerable areas. The government already uses direct means of monetary compensation and indirect means of insurance subsidies and risk mapping for town planning in rebuilding efforts. Some of these methods involve individual choice but others involve the social environment. In rebuilding efforts, the federal government should acknowledge that individual choice and social pressures cannot be so easily separated. If the government relies on individuals to choose their location, methods to influence settlement patterns should be more openly discussed and shared with the community so that they may make real informed decisions.

Principle 3: Privileges physical infrastructure

According to my interviews, “good recovery” means rebuilding physical infrastructure, and rebuilding quickly. The Stafford Act provides monetary compensation that aids individuals and municipalities in rebuilding under the Sec 408. Federal Assistance to Individuals and Households (42 U.S.C. 5174)

EW: I really believe that Cameron Parish and the southwestern parishes responded very well after Rita. They were aggressive in rebuilding their facilities. I believe that Plaquemines Parish was very aggressive early on in moving their projects forward. Slidell and St. Tammany was as well. St. Bernard has been aggressive over the last two years of moving forward with their public infrastructure type projects. Within the City of New Orleans, there are several applicants like the

⁴ I use the term ‘nudge’ as defined in R. Thaler and C. Sunstein’s (2008) book: Nudge: Improving decisions about health, wealth and happiness’, meaning enlisting a science of choice that influences human behavior to make their lives better.

Sheriff's office that's moving forward, they're a separate from the City of New Orleans, but they've moved forward pretty aggressively with parent facilities. There are some good applicants because they're able and capable of moving out on their projects quickly, that's doing some good things.

The focus on physical rebuilding is rooted in American history. The most common federally declared disasters are floods which hit agricultural communities the hardest. (Downton and Pielke, 2001) Throughout America's history, when the federal government was involved in community building, it was often, but not always, in the form of disbursing aid to rural communities that could not afford to connect physical infrastructure to address the challenges of being low in density and spatially isolated. (Flora and Flora, 1993) For example, Section 427 Essential Service Providers (42 U.S. C. 5189e) authorizes provision of telecommunications service, electrical power, natural gas, water and sewer services, or any other essential service as determined by the President. Essential services are categorized as 1) saving lives and 2) protecting property. Saving lives includes: search and rescue, emergency medical care, emergency mass care, emergency shelter, and the provision of food, water medicine, durable medical equipment, and other essential needs, including movement of supplies or persons, warning systems, and disseminating information. (Sec. 403) Protecting property includes: debris clearance, road clearance and temporary bridge construction, temporary school and community service facilities, technical advice to state and local governments and demolition of unsafe structures. As for recovery, replacement building and debris clearance take up the bulk of the Act., for example Sec 323 Standards for Public and Private Structures (42 U.S.C. 5165a) sets priorities for repairs to the built environment. Sec 611 Detailed Functions or Administration (42 U.S.C. 5196) (i) outlines the authority of the Director of FEMA in procuring and condemning facilities. The main protection for property assets is through insurance, as outlined in Section 311 Insurance (42 U.S.C. 5154), and fraudulent attempts to subvert this system are punished in ways

outlined by Prohibited Flood Disaster Assistance (42 U.S.C. 5154a). Physical infrastructure is seen as the sole basis for economic growth. Marc Roy explains the thinking behind this focus:

MR: FEMA funds physical infrastructures as a means to provide places for people to go back to work and to put public buildings back in service. The guiding principle for domestic management of disasters has always been to require "skin in the game" from those who benefit--not just a handout or grant, but participatory funding by states, counties, etc. FEMA has paid for management costs of contracts, some overtime for teachers and firefighters. Again, the idea is that the salaries were budgeted locally (usually) pre-disaster and putting the facilities back up places the areas in positions similar to their pre-disaster situations.

In practice, physical infrastructure is prioritized. By offering funds to municipalities for rebuilding, the federal government has the opportunity to control where human resettlement occurs. Indeed, each interviewee emphasized the "facility split" as one of the most, if not the most important lesson learned from Katrina. Eddie Williams, Public Assistance Officer explains:

EW: From a federal perspective, we are prohibited from building new construction in the V [velocity] zone. That's been an ongoing issue for us, for now probably a year almost. Because many projects that applicants want to rebuild and move from one location to another location is going into known V zones right now, so given that information, and the fact that we're not allowed to rebuild in the V zone, or build new construction in the V zone, it's caused some projects to be in a holding pattern until the applicants can find a viable alternative to rebuilding back in their V zone. Now, recent clarification to FEMA policy does allow us to reconstruct the facility in the V zone, as long as the facility isn't completely destroyed, meaning 100% of the facility is just completely destroyed, and as long as the facility is substantially on the same footprint where it was, and that it's not larger than about 110% of the previous footprint. That guidance came out in June of 2009, and it helped us move a bunch of projects forward, but it still falls short of allowing applicants and subgrantees to just move about a V zone and construct wherever they want to.

I argue that a greater emphasis on social infrastructure will enhance human dignity. Support for social infrastructure can be read from the Stafford Act, but is underutilized in practice. Social infrastructure is made up of less tangible, less measurable work, but is "the necessary ingredient for linking physical resources and leadership for community development." (Flora and Flora, 1993) In other words, the community needs social infrastructure in order to use physical

infrastructure effectively and appropriately. While some social infrastructure is strictly prohibited (like salaries for janitors but not teachers), some provision for certain types of social infrastructure exists in the Act such as Sec. 416. Crisis Counseling Assistance and Training (42 U.S.C. 5183) authorizes professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath. However, counseling receives a small proportion of overall funds in practice. (Calderon-Abbo, 2008)

MR: Some, not a lot, of mental health services is paid for or provided, i.e., counseling. Psychiatric prescriptions and long-term treatment is not. There has been discussion about changing some of these benefits or extending them. No action taken so far.

After Hurricane Andrew in 1992, researchers found that disaster victims suffered from a litany of disorders including post-traumatic stress syndrome, injuries, bereavement, threat to life, depression, a loss of self-esteem and reduced social embeddedness. (Norris, et al, 1999) Loss of property was only one aspect of recovery that needed to be addressed.

Moreover, researchers found that for a substantial minority, psychological conditions after natural disaster decreased after a year, and on the whole, recovery was far from complete two years later. (Norris et al, 1999) This indicates that long-term crisis care is necessary. Initial trauma after Hurricane Andrew, they found, was addressed by volunteers and donors but on-going services were not supported. They argue that long-term crisis intervention is effective and that there is a danger in assuming that conditions are inevitably normalized after a life-event such as disaster. (Norris et al, 1999) I argue that psychological stress is not adequately recognized by the federal government as a root cause that may keep displaced persons from engaging in a new

community or community redevelopment. FEMA privileges property while personal improvement goes untreated.

The primary method FEMA uses in addressing individual loss is through disbursing funds. Again, we can predict failures if checks are distributed without the proper education of basic budgeting, how to follow rules governing the funds and how to avoid scam artists. It appears that FEMA is beginning to realize that disaster is a social phenomenon and that a better social response is needed:

CS: The biggest thing we learned is that you have to educate [individuals receiving assistance] on the front end. If you don't educate them before they get the check, the check's gone. The check is gone. There is a problem with that. The Stafford Act requires you to spend your money in a certain fashion in order for you to be eligible for other assistance through the Stafford Act. And we did implement several programs after, utilizing non-profits... Contractor fraud was rampant. If applicants could show to us that, "yes, I got scammed, I lost my money," and filed a police report, called insurance, whatever, we were very lenient with them. We did learn early on it was a huge issue, so our staff, that was part of our sales pitch, "Watch out for contractor fraud, make sure you're vetting everything that you, anybody that you speak to before you hand over money." Especially money we gave you, be very very cautious with it. Make sure contractors have their permits and are licensed in the state.

Social networks are also important in responding to disaster. Mike Karl also reported a system some states use to develop networks to help the displaced in emergencies. An example, he said, were towns in Missouri who have developed proactive plans that allow cities to absorb displacement from another area. He said this system has been used in multiple flood occurrences of the Mississippi River. Such a preparation strategies recognize the social infrastructure people need in an emergency. Lacking such a strategy puts people at risk for human violations when decisions are made on the spot and subject to political agenda, individual greed, incompetency, and widespread panic as we shall see in Chapter 4.

Principle 4: Hazard mitigation as final step

According to my informants, the federal government interprets mitigation is largely an ecological task. In domestic disaster policy, it is intensely concerned with the built environment. Even so, hazard mitigation is considered the last step in responding to a crisis. Alternatively, it could be part of the preparation process or even immediate recovery such as requiring Best Management Practices (such as runoff protection) in rebuilding sites. In Title I Sec. 101, the Stafford Act outlines the intent of hazard mitigation as “measures to reduce losses from disasters, including *development of land use and construction regulations.*” (my emphasis) Sec. 404 Hazard Mitigation (42 U.S.C. 5170c) outlines the terms, and conditions of hazard mitigation focusing on acquisition and relocation projects and where structures can and cannot be placed.

The Stafford Act defines “hazards” as an emergency or disaster resulting from *either* a (A) a natural disaster *or* (B) an accidental or man-caused event. (Sec 602 Definitions (42 U.S.C. 5195a) A natural disaster “means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes or which may cause, substantial damage or injury to civilian property or persons. “Accidental or man-caused events” are not defined.

Some states have taken leadership like California with earthquakes and Florida and North Carolina with hurricanes. (Birkland and Waterman, 2008) But hazard mitigation has also suffered at the hands of the human/nature split. Mitigation is seen as an afterthought, neglected because “more pressing daily issues’ like education, housing and poverty overshadow it. Poverty reduction is not seen as a mitigation measure, despite the fact that the socially vulnerable are those in most need of aid in the event of a disaster. Instead, nearly 100% of FEMA money is

directed to masculine industries like construction and debris clean up whereas feminine caretaking industries do not enter into the disaster equation. Disasters are times when men can be heroes and show that they are resilient. They need to have victims to save. Social welfare falls to the wayside. Disaster policy reflects a certain style of masculinity, of mitigation through engineering feats, of response through Coast Guard search and rescue efforts and recovery through reconstruction and debris removal.

Principle 5: Reactive to federally declared disasters

The data suggests that the Stafford Act relies on past experience to inform the present:

CS: A lot of situations still come up where we say let's revisit the Stafford Act and pull those words out that really will assist us a little bit more than were already are.

It is laudable that the Stafford Act has evolved and that Congress has incorporated lessons learned into the document. Yet, one temporal dimension is missing, and that is the future. The Stafford Act bases funding provision on what can be predicted. For example, velocity zones, or "V-Zones," outline low-lying areas in multi-hazard advisory maps are commissioned. This is all very well too. However, future concerns that have not fully crystallized as immediate concerns, like sea level rise, are not addressed. Katrina provides another instructive moment. Before Katrina, "catastrophe," or extreme event that overwhelmed local and state resources completely and immediately, was not addressed in the Stafford Act. Confusion sent officials scrambling as they attempted to sort out roles and responsibilities as the disaster was in full force.

Chapter 4

Right to Return and International Law

This paper has argued that domestic disaster policy would be better served if the right to return was conceptualized as the right to return with dignity and not just a right to return to a specific geographic place. *But what does dignity mean?* In this section, I turn to international law as a normative baseline to define and evaluate human dignity.

Under international law, the nation-state is ultimately responsible for protecting the inherent dignity of human persons through the activities of their agencies, of state governments, local governments, tribal governments, corporations, humanitarian organizations, individuals, and any actor involved in a disaster scenario. A human rights violation at any level is ultimately the responsibility of the federal government. In “International Human Rights Law Violations Before, During and After Hurricane Katrina: An International Law Framework for Analysis,” Edwards (2006) identifies four binding treaties, three treaties signed by the US but not ratified, two soft law instruments of customary norms, and four other relevant international instruments (for a total of 13) in which United States’ action during Katrina could be called into question. He does not, however, take the next step in identifying which practices violate which treaty. Most others, whether authors of peer-review journals, journalists or activist groups, list accusations but do not identify which treaties they violate. The following is an attempt to merge accusations of human rights violations in relation to the Katrina case with the provisions they relate to in the relevant international law instrument to which the United States is party. Given my argument that all disasters are no longer local, international law must play a larger role in evaluating disaster governance. I use the Edwards list as a guide to organize the issues, but to prevent

duplication, I list violations only once while realizing many overlap protections provided by multiple treaties. Again, the interconnectedness should not be missed. Too, it should be noted that while the focus is on New Orleans, nearly all of the rights listed below have been implicated in other locations in the Gulf Coast. I will be as careful as possible not to produce redundancy throughout the paper, but events often transcend categorization. Many of the issues described have been repeated in the media and analyzed from every angle. Indeed, most New Orleans residents were almost bored to hear these shocking facts when I related to them my findings. Yet, I am sure there are many more untold stories, especially those that lie deep within the subcontractors of the subcontractors in the construction industry of the rebuilding efforts. Kromm and Sturgis (2008) have done much of the legwork in organizing incidents under the UN Guiding Principles on Internally Displaced Persons. I take this a step further by reviewing the violations in the context of all of the international treaties to which the US is a party and adding updates. This section reviews the human rights outcomes of the preparation, response and recovery efforts under the leadership of the United States government.

The bad news is that many violations remain uncovered or ignored and that many are not unique to New Orleans. It is important to remember that Katrina unveiled structural inequality propped up by a system of corruption, cronyism and price gouging. New Orleans is a unique city, Katrina was a unique event, but similar violations are happening in other vulnerable areas.

The good news is that society has been learning from our mistakes. Cases are being litigated in court and new policies and frameworks are being debated in Congress. To systemize our learning, below are the human rights treaties and their provisions that provide the normative baseline upon which we can measure human rights outcomes, as indicated by incidents that occurred during the events known as Katrina. Binding treaties are those that the United States

has signed and ratified, and are therefore obligated under the treaty. The relevant UN binding treaties pertaining to human rights that will be discussed are: the United Nations Charter, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Because of overlap, issues relevant with the Charter and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment have been collapsed into discussions of the other treaties. Some claims might also fall under agreements that the United States has signed with other countries under the Organization of American States, but those will not be discussed here. Treaties that the United States has signed but has not ratified are: the UN International Covenant on Economic, Social and Cultural Rights (Economic Covenant), the Convention on Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child (CRC). The two soft law instruments that will be discussed are the UN Declaration on Human Rights and the UN Guiding Principles on Internally Displaced Persons. These documents are not treaties, but are considered sources of international law behind the treaties, as customary norms. Other relevant international instruments of varying levels of legality that could be considered relevant to Katrina but will not be discussed at length are: the Vienna Declaration and Program of Action that places the duty to promote and protect human rights on the State, the 1993 Vienna Convention on the Law of Treaties which reflects customary international law and is considered by the United States an “authoritative guide to current treaty law and practice,” the International Law Commission Draft Articles on the Responsibility of States for Wrongful Acts ("Draft Articles on State Responsibility"), which states that “when one State breaches a treaty, it owes remedies to other States that are parties to that treaty” and the United Nations Basic Principles on

the Use of Force and Firearms by Law Enforcement Officials which outlines when and how force may be used by law enforcement officials. Much of what applies to the other treaties also apply to these international instruments, so in the interest of avoiding duplication, I will not discuss them.

Binding Treaties

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights was signed in 1966 and came into force in 1976. The United States has ratified the IPPCR, but with five reservations, five understandings and four declarations, weakening their obligations under the treaty. Although the ICCPR recognizes that States are otherwise occupied with logistics during times of crisis, they specify that the human rights of individuals within their borders are still to be protected. This emergency clause was intended to apply to breakdowns of public order such as civil war, and not necessarily natural disaster situations. As Article 4 states clearly:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

The National Lawyers' Guild (2005) issued a resolution prepared by Ann Fagan Ginger of the Meiklejohn Civil Liberties Institute accusing the United States government of 17 human rights violations under the International Covenant on Civil and Political Rights, along with the Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (both described below).

A primary civil right protected under this treaty is the *right to be free of discrimination* based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Guild maintains that the civil rights of certain New Orleans residents were violated specifically on race and class. The failure to fund levee work necessary to prevent buffer zone (detailed elsewhere), put adjacent neighborhoods, often poor and/or black, at a disadvantage. The subsequent breaches further impacted the poor areas of St. Bernard Parish and the majority African American population of the Lower 9th Ward.

After accounting for age, African Americans were disproportionately likely to die in the disaster. (Sharkley, 2007) Orders by the City of New Orleans to evacuate by personal vehicle when it was known that the 120,000 of residents (24% of blacks compared to 7% of whites) did not own cars, (Kromm and Sturgis, 2008) led to this discrimination. African Americans were also discriminated in specific ways according to race which will be discussed at more length in the section on the Race Covenant.

In the two months following the storm, only 1.5% of FEMA contracts were awarded to minority-run firms when 5% is required under usual circumstances. (Kromm and Sturgis, 2008). Although the GAO reported that this number eventually increased, they note that statistics are inconclusive due to poor reporting practices of subcontracted work on the part of federal agencies. (United States GAO, 2006)

Basic justice rights of habeas corpus, due process and the right to a speedy trial have been violated in the incidents following the storm. Louisiana is the only state in the country to fund its justice system through traffic tickets and court costs, revenue that was drastically reduced during the storm. Without sufficient funds, the no jury trials were held for ten months after the water receded. (Garrett and Tetlow, 2006) A year after the storm, hundreds of inmates had yet to see a

lawyer or a judge. (Garret and Tetlow, 2006) A make-shift criminal court in operation for two months violated open proceedings rule by barring family, friends and counsel in the courtroom. (Garrett and Tetlow, 2006)

During the storm, the situation in the Orleans Parish Prison (OPP) was more shocking, and can be considered cruel, inhumane and degrading. Some deputies brought their families to the prison keep them close, others abandoned it altogether. Without an adequate plan for a catastrophic storm, wardens followed “vertical evacuation,” cramming inmates in the uppermost floors of a building that was not up to code for modern space regulations. People accused of public drunkenness stood shoulder to shoulder in rising waters with persons accused of murder. It has been estimated that 8,000 prisoners were housed in the Orleans Parish Prison, the seventh largest jail in the country. Electric-powered gates locked prisoners in their cells when the power went out. (Garrett and Tetlow, 2006) A day after flooding, prisoners were ferried to the Elayn Hunt Correctional Facility in St. Gabriel, Louisiana for processing where men and women, being held under various pretenses, were grouped together with inadequate food and water. (Garrett and Tetlow, 2006) The American Civil Liberties Union claims that OPP is still ill-equipped for future disasters. (Kromm and Sturgis, 2008)

Outside the prison, officials engaged in police brutality and use of force. Eleven persons were shot by police during the storm and four died as a result. After the floodwaters receded, undeclared martial law was followed police officers, federal agents, and troops as they patrolled the city. (Garret and Tetlow, 2006)

International Convention on Elimination of All Forms of Racial Discrimination (Race Covenant)

The Race Covenant was signed in 1966 and became effective in 1969 and protects the freedom from racial discrimination. The Race Covenant protects against such discrimination based on race, in particular Article 1(1):

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Hurricane Katrina exposed a spatially manifested structural racism in America that existed historically and evolves through the passage of time. At the time of Katrina, 75% of African Americans were segregated in New Orleans, 29.2% of which were living below the poverty line. (Amnesty International, 2009) FEMA response and disaster policy negatively impacted blacks more than whites due to these pre-existing concentrations of poverty in black communities.

Discrimination against blacks was apparent in the preparation, response and recovery of Katrina. As discussed above, the ad hoc evacuation plan of the City called for mandatory self-evacuation made possible only by cars when it was well-known that of the 120,000 persons who did not own cars, 24% were African Americans, compared to 7% white. (Kromm and Sturgis, 2008) Host families and entire host cities preferred whites over blacks. The media was caught calling blacks "looters;" blacks were even referred to as cockroaches. (National Lawyers Guild, 2005) Some have accused the City of racial discrimination during the evacuation, claiming that empty busses drove past African Americans, including the elderly, which could have saved them. (Dangel, 2005)

African Americans were unfortunately not the only ones who were discriminated against because of their race. One million foreign-born persons lived in the Gulf with large populations of Mexicans and Vietnamese, but evacuation information was only provided in English. While officials in Hattiesburg, Mississippi were made aware of this at the last minute and posted flyers in Spanish on apartment complexes with majority Latino residents, Spanish-speaking homeowners were not informed. (Kromm and Sturgis, 2008) To add insult to injury, a former landfill and Superfund site of post Hurricane Betsy waste was re-opened near a Vietnamese-American community to take hazardous waste and debris from Katrina. The community protested, and it was eventually closed. (United States GAO, 2008) Latinos, too, were discriminated against in shelters. Local police raided some shelters picking up Hispanics without proper identification. Fearful of the government, the American Red Cross refused service to some Latino-looking displaced persons. (Kromm and Sturgis, 2008) Houma, the largest Native American tribe not recognized by the United States government, also faced discrimination in shelters. The American Red Cross bypassed their areas, and when they did arrive, their services were inadequate. (Kromm and Sturgis, 2008) In the justice system, Houma prisoners served an inordinate amount of time because their files were lost. (Garrett and Tetlow, 2006) Bonds were often set higher than indigent inmates could afford on purpose, so that the court was not responsible for transportation to the point from which they had been evacuated. (Garrett and Tetlow, 2006) More discrimination occurred in the Orleans Parish Prison and the handling of cases following the storm, but they will be described under the provisions protected by the next treaty.

Treaties signed but not ratified

International Covenant on Economic, Social and Cultural Rights (Economic Covenant)

The UN International Covenant on Economic, Social and Cultural Rights is part of the International Bill of Human Rights along with the Universal Declaration of Human Rights and the ICCPR. It was signed in 1966 and came into force in 1976. It protects the right to an adequate standard of living, including food, water and housing, among others. Article 3 of the this covenant protects the *equal rights of men and women to the enjoyment of economic, social and cultural rights*, including the rights to housing, education, food, etc. However, housing rights have not been protected. The US Department of Housing and Urban Development said that 4,000 internally displaced persons would not eligible for Section 8 and will have trouble finding affordable housing (Amnesty International, 2009) Five thousand units of public housing, many of which did not suffer 50% or more damage, have been demolished (Amnesty International, 2009). Renters' housing rights have not been protected either. Rent is 52% higher in 2009 than pre-Katrina due to price gouging and the market forces of supply and demand. (Amnesty International, 2009) IDP's economic rights could also be said to have been violated. Before Katrina, 44% of IDPs made less than \$15,000/year, after Katrina, 74% did. Before Katrina, 27% were unemployed, 70% after. Even higher educated and skilled workers are having trouble finding jobs. (Dickerson, 2008) Other violations could be considered under this treaty, but I will list them under their more specific provisions below.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 and enforced in 1981. It protects the right to be free of discrimination based on sex among others. Women's rights have been a quieter feature in the broader scope of human

rights violations of Katrina, but that is not to say that women were not discriminated against because of gender. A 2007 survey, for example, found that 1 in 6 of internally displaced women was victims of domestic violence, 54 times the national average. (Amnesty International, 2009; Kromm and Sturgis, 2008)

The government denies deaths at the Orleans Parish Prison during the disaster, but personal testimony from officers contradict that statement, claiming that at least one pregnant teenager died in the jail. In addition, two female prisoners reported to have had miscarriages and were left without medical care even after rescue. (Kromm and Sturgis, 2008)

Convention on the Rights of the Child

Not much information exists regarding discrimination of children during the storm. However, children were unduly neglected by the educational system before and after the storm. As of 2006, about 20 out of 120 of public schools in New Orleans have reopened after the storm. (Urban Institute, 2006) Prisoners as young as 10 were among those held for pre-trial detention on minor offenses were stuck in the Orleans Parish Prison fiasco. (Kromm and Sturgis, 2008)

Soft Law Instruments (customary norms)

Universal Declaration on Human Rights (UDHR)

The United Nations adopted the Declaration on Human Rights on December 10, 1948 and defines obligations of nations to promote a list of rights that all human beings are entitled to. The purpose of the document is to outline shared global values in protecting individuals in peace and wartime situations while acknowledging the sovereignty rights of nations. It is a positive law embodiment of rights to all persons. The document was particularly reactive in its development

as it was written to prevent WWII type of atrocities from happening again. Eleanor Roosevelt played a key role, as did representatives from “Western” (Canada, France, etc.) and “non-Western” (China, Lebanon, Chile, USSR, etc.) countries. Because the Guiding Principles are more specific, I will organize the human rights incidents accordingly.

UN Guiding Principles on Internal Displacement

The Guiding Principles have not been written into a treaty, and therefore, internally displaced persons have no legal status under international law. However, it is emerging as customary law as over 150 countries have supported the Guidelines. (Kromm and Sturgis, 2008) Along with the 2006 Protocol on the Protection and Assistance to IDPs and the 2009 African Union Convention for Protection and Assistance of IDPs in Africa, the document defines IDPs and obligations of nation-states to protect their citizens. Perhaps the most important language in the definition of IDPs is the criteria of not having crossed an international border. This distinguishes IDPs from refugees, who are protected under the 1951 Refugee Convention, the 1969 OAU Convention and the 1984 Cartagena Declaration on refugees. (UN High Commissioner for Refugees, 2009) As such, state governments are responsible for protecting their own residents from human rights violations in the face of crisis, and they have the privilege of invoking rights of national sovereignty in refusing international intervention. As the cases below demonstrate, sovereignty has frustrated international agencies in their dependency on states to admit them. Even so, some scholars argue that when the bond between state and citizen is severed in cases of internal displacement, IDPs need special human rights protection. In fact, Francis Deng did not conceptualize IDPs as requiring special legal status, nor did he write that the responsibility to protect IDPs should be shifted to the international community. However, he did envision human rights protection for IDPs. The 30 Guiding Principles can be seen as best

practices for states to follow to protect IDPs before, during and after a crisis. If anything, the guidelines should be taken as evidence that the US government was aware of potential social problems that could follow disaster.

Walter Kaelin holds the current position of Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. I had the opportunity to interview him over Skype to understand how he interprets the right to return for the environmentally displaced when their place of residence is no longer tenable. He considers the Guiding Principles as most relevant to understand the situation individuals face when dealing with environmental change.

WK: I strongly feel that for those who are displaced by natural disasters the Guiding Principles are in fact quite useful. I came into office directly before the tsunamis hit in the Indian Ocean. At the time I felt, because previously no one had been looking at natural disaster issues, that this might be a situation where the Guiding Principles in fact could be helpful for people.

WK: This is in fact a very complex issue because on the one hand, you have the freedom and liberty to choose your own place of residence, and from that the Guiding Principles introduce this right to return. It's a right to choose whether to return or whether to emigrate elsewhere in the country or to another place, and to not be misplaced. So that is one principle. *The other principle is, again it's a human rights principle, that you care to protect people against threat to life, security, and health.* In some situations the government would have the right to say "You can't go back there, it is dangerous. We want to relocate you to another area." (my emphasis)

While the United States is ultimately concerned with urban growth and generally supports return, this does not appear to be the case in other countries who keep people from returning. Thus, return has been codified into international law as a right. The land in question is assumed to be returnable.

WK: I wrote on the issue of climate induced displacement, and informed choice is most important. People do want to go back, and it is not clear enough that there would be a real threat to their lives, and if they are in very difficult living conditions, and they are the one has to enable them to take part in that information. But in practice what I've seen is a tendency by governments to say, "you can't go back there."

However, there have been some cases when the land in question was determined to be hazardous.

WK: In Honduras, I visited an area where there have been mudslides coming down and hail and the whole thing was locked for people to return. And I've seen in Madagascar tendency of the government to relocate people out of these river valleys that are flooded regularly, and people really didn't like it. They wanted to go back. So it's a tricky issue, balancing the right to return versus the decree of danger and adaptation measures of course come in. So, I think there are some general abstract criteria you'll have to look at, but then to apply them in a given context, it's always very contextual.

Nearly every Guiding Principle has been called into question in whole or in part. I have only found two Principles that did not seem to be violated and two Principles that were unequivocally followed. The two Principles that I have found no evidence of violations are #13:

1) in no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities. 2) Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances and #26 Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be object of attack or other acts of violence.

Of the incidents that violated international human rights norms outlined by the UN Guiding Principles on Internally Displaced Persons, I submit the following table:

Table 3 Human Rights Violations to the Guiding Principles on Internally Displaced Persons

Principle	Incident
1. <i>IDPs shall enjoy the same rights and freedoms as others in their country</i>	Before Katrina, 44% IDPs made less than \$15,000/year, 74% post-Katrina; 27% were unemployed before, 70% after. Even higher educated and skilled workers having trouble finding work. (Dickerson, 2008)

OSHA suspended enforcement of health and safety regulations until January 2006 except in the 7 hardest hit LA parishes where suspension was extended further. (Kromm and Sturgis, 2008)

Affirmative action regulations of the Davis-Bacon Act were suspended. (Kromm and Sturgis, 2008)

3. National authorities' primary duty is to provide protection and humanitarian assistance

A profoundly disturbing incident took place that delayed federal intervention in Katrina response. The President of the United States and the Governor of Louisiana apparently thought that the storm was the appropriate time to negotiate military operations. (Garrett and Tetlow, 2006) Most of the Louisiana National Guard had been deployed to the war in Iraq and were not due back for weeks. So, Governor Blanco requested special assistance from the President. The President countered that he would not send troops until the Governor agreed to federalize the state's troops. Blanco refused, fearing a loss of control over the state's troops and because the implication of the move would refrain the Guard to conduct law enforcement (under the Posse Comitatus Act). The President eventually agreed to send federal troops without the conditions met, but the attempted negotiation clearly demonstrated that the national authority's primary duty was not to provide protection and humanitarian assistance, but to advance their political agenda. (Garrett and Tetlow, 2006)

*4.1 without discrimination
4.2 special needs protection for
unaccompanied minors, expectant mothers,
mothers with young children, female heads
of households, persons with disabilities*

Special needs for the *elderly* were not available. 64% of deaths occurred to those 65 or older. The US House of Representatives declared that nursing home evacuations led to preventable deaths. (Kromm and Sturgis, 2008)

Hospitals were excluded from the City's emergency plan leaving staff to take care of persons with disabilities without food or water in debilitating heat leading to several deaths. (Kromm and Sturgis, 2008) Reports state that the American Red Cross excluded persons with psychiatric disabilities from some shelters. (Kromm and Sturgis, 2008) The City's Superdome was designated as a "special needs" shelter, but did not have the personnel, medicine or equipment to aid persons with health disabilities. Notably, dialysis and food for diabetics has been reported as lacking. (Kromm and Sturgis, 2008)

Discrimination in *housing* confirmed, tested in 5 states and 17 cities such as showing apartments to whites only, quote higher rental and security deposits to blacks, publicized ads for whites only or Christians only. St. Bernard Parish (93% white) ordinance post-Katrina restricted homeowners to rent to only blood relatives, subject to fine. Jefferson Parish resolution opposing low-income, tax credit multifamily housing; stopped construction of 200-unit apartment on vacant land for persons over the age of 62 and Section 8. (Quigley, 2008, Scott, 2008)

Renters have been discriminated against in recovery, as rents have skyrocketed 40-200% in some areas. (Kromm and Sturgis, 2008)

Persons were discriminated against due to *property ownership*, as explained above, the City followed a self-evacuation plan by car when 120,000 residents were known to not have access to private vehicles. (Kromm and Sturgis, 2008)

5. ...*prevent and avoid conditions that might lead to displacement of persons*

As discussed elsewhere in this paper, the rights of IDPs to be free from displacement were severely compromised by the US Army of Corps of Engineers' lack of concern for the safety of persons and property. Nearly 20,000 acres of marshland has been destroyed as a direct result of ACE canal operations, causing the breaches that forced evacuations.

6(3): *displacement shall last no longer than required by circumstances*

There is a clear double standard in the government being slow to respond by requiring IDPs to adhere to strict timelines. From the literature, a consensus emerges that the appropriate timeframe to begin the recovery process from a disaster of this size is one year. For example, several author express surprise and dismay when documenting recovery efforts that had not been accomplished after one year. Reports from the first anniversary note that many individual assistance funds had not yet been paid out. However, IDPs were expected to follow strict timelines. For example, a New Orleans City Ordinance 26031 gave residents a year to gut their homes. (Kromm and Sturgis, 2008) It was eventually extended when homeowners protested that it was insufficient time. Further, the State of Louisiana

	<p>authorized \$756 million in the Road Home Program but in February of 2007, only 630 of 107,000 applications were paid out. (Kromm and Sturgis, 2008) Federal unemployment assistance lasted less than a year, until June 2006. (Kromm and Sturgis, 2006)</p>
<p>7 (2): <i>proper accommodation is to be provided...effected in satisfactory condition of safety, nutrition, health and hygiene</i></p>	<p>FEMA trailers found with 75x the amount of formaldehyde for US workers (Amnesty, 2009) A 2007 survey found that nearly ½ of FEMA trailer residents in worse health post-Katrina than before. EPA/NRDC found unacceptable levels of arsenic in schoolyards. GAO “millions of gallons of oil and unknown quantities of potentially hazardous chemicals were released into the environment” (Amnesty, 2009)</p>
<p>8: <i>displacement should not violate rights to life, dignity, liberty, security</i></p>	
<p>9: <i>protect against the displacement of indigenous people, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands</i></p>	<p>The Native American tribe of Houma was offered little assistance, and fishing communities were negatively impacted. (Kromm and Sturgis, 2008)</p>
<p>10(1): <i>every human being has the inherent right to life...no one should be arbitrarily deprived of his or her life</i></p>	<p>On September 4 after the storm, police shot two people and injured four on the Danziger Bridge over the New Orleans Industrial Canal. Although they were following up on reports of a downed colleague and claim self-defense, one of the men, mentally disabled Ronald Madison was found with bullet holes in the back. (Kromm and Sturgis, 2008)</p>
<p>11(1) <i>right to dignity and physical, mental, and moral integrity</i></p>	<p>A 2006 of FEMA trailer residents reported 7 times the national average of depression and suicide was 79 times more likely than before the storm. (Kromm and Sturgis, 2008)</p> <p>Accusations of “contemporary slavery” were directed at reconstruction companies who underpaid or did not pay workers. In a 2006 survey, 47% did not receive all that was owed to them and 55% reported they did not receive overtime. (Kromm and Sturgis, 2008)</p>
<p>12(1): <i>right to liberty and security of person, no arbitrary arrest or detention</i></p>	<p>Red Cross denied services at times to Latinos without identification, US marshals raided American Red Cross</p>

(2): IDPs shall not be interned in or confined to a camp, if confinement is absolutely necessary, shall not last longer than required by circumstances
(3): IDPs shall be protected from discriminatory arrest and detention as a result of their displacement

14(1): right to liberty of movement and freedom to choose his or her residence
(2): right to move freely in and out of camps to other settlements

15(1): right to seek safety in another part of the country
(2): right to be protected from forcible return or resettlement

16: (1): IDPS have right to know the fate and whereabouts of missing relatives (2): authorities shall endeavor to establish the fate and whereabouts of IDPs reported missing, and cooperate with international organizations engaged in this task, and notify next of kin

17: (1): right to respect of his or her family life (2): family members who wish to remain together shall be allowed to do so (3): families separated by displacement should be reunited as quickly as possible, authorities shall facilitate inquiries and cooperate with humanitarian organizations engaged in reunification (4): IDPs in camps shall have the right to remain together.

18: right to an adequate standard of living

19(1): all wounded and sick IDPs as those with disabilities shall receive to the fullest

in Long Beach, MS (Sept 28th) and two clinics in D'Iberville, MS (Oct 5th) (Quigley, 2007, Kromm and Sturgis, 2008)

Housing ordinances (see 4.1)

Two housing websites were sued for discrimination. Postings to house displaced persons included language like "not racist, but whites only," "must be honest and Christian," and "as a white couple, we would be looking for a white mother and baby." (Perry, 2005)

On Sept 1st, residents of the white suburb of Gretna forced 200 black persons trying to escape across the Crescent City Connection and back into New Orleans. They claimed they could not serve any more displaced. (Kromm and Sturgis, 2008)

Button (2009) accuses FEMA of refusing to provide evacuees and social service providers with access to databases that housed information regarding family members. It appears that FEMA was initially concerned with violating privacy rights, but eventually reversed this stance.

From personal observation and anecdotal information, Button (2009) relays stories of IDPs who were forcibly separated from their family members, sometimes at gunpoint, and dropped off at shelters in other cities without knowledge of the whereabouts of their relatives.

No Gulf Coast states recognize same-sex marriage. It is unclear if unmarried partners were discriminated in any way in terms of reunification or receiving benefits of the deceased.

Drinkable tap water not restored city-wide until Oct 2006; Lower 9th last. (Amnesty International, 2009)

Many who did not meet Medicaid requirements remained uninsured, one woman with a brain tumor was

extent practicable and with the least possible delay, the medical care and attention they require

(2) Special attention should be paid to the health needs of women, including access to female health care providers and services.

(3) Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among IDPs.

19(2): special attention should be paid to the health needs of women, including access to female health care providers and services

20(1): right to recognition everywhere as a person before the law

(2): authorities shall issue documents necessary to enjoy legal rights, shall facilitate new documents or replacement without unreasonable conditions such as requiring them to return to place of habitual residence to obtain them

21(1): No one shall be arbitrarily deprived of property and possessions

22: not to be discriminated against as a result of displacement in the enjoyment of their rights

(b) right to seek opportunities for employment and participate in economic activities

(c) right to associate freely and participate in community affairs

(d) right to vote, including the right to have access to the means necessary to exercise this right

transferred from Charity Hospital to a private hospital in Baton Rouge and was initially rejected for surgery. (Rudowitz, 2006)

New Orleans is second only to Miami in HIV/AIDS (www.avert.org) 8,000 HIV/AIDS sufferers were displaced, after 6 months, had to travel 70 miles for subspecialty care, no pharmacies opened for antiretrovirals, no transportation, many social workers left (Clark, et al, 2006)

As described above, pregnant prisoners remained untreated after their evacuation from the Orleans Parish Prison.

Jailers tried to sort out inmates and house them under enormous logistical difficulties, but inmates' medical records did not follow them, and psychiatric patients did not receive their medications. (Garrett and Tetlow, 2006)

Louisiana estimates that homeowners have received on average \$5700 less than rightfully owed by their insurance companies. The Louisiana Attorney General filed suit against major insurers accusing them of rigging property damage claims. This case has not yet been solved. (Kromm and Sturgis, 2008)

Those who have not returned are substantially more likely to be unemployed (34.7%) than those who have (5.3%). (Dickerson, 2008)

2005 elections: 1st time LA allowed NOLA residents to vote outside of the City, but no out of state voting. 38% registered voters voted compared to 46% in the 2002 mayoral race. White areas of Uptown well represented while black neighborhoods of NO East, Gentilly and 9th were not. (Dickerson, 2008; Holmes, 2006)

LA's Secretary of State Jay Dardenne "purged" voter rolls, eliminating 21,000 internally displaced persons. (Kromm and Sturgis, 2008)

24(1): *all humanitarian assistance shall be carried out in accordance with the principles of humanity an impartiality and without discrimination*

(2): *humanitarian assistance to IDPs shall not be diverted, especially for political or military reasons*

Politics were said to have played a large role in the distribution of funds under a Republican President and Republican Congress. For example, the Republican State of Mississippi disproportionately received more funds from the Community Development Program, Block Grants, FEMA's Alternative Housing Pilot Program and assistance to K-12 students than the Democratic State of Louisiana. (Kromm and Sturgis, 2008)

Contracts were awarded to corporations with close ties to the Administration. For example, at least two high ranking employees of the corporation Shaw Group formerly worked under Bush and received a contract in which they overbid by 3 times.

Another company with close ties to the Administration was Landstar who won a DOT contract to shuttle people and supplies. Mismanagement delayed evacuation by 18 hours. They then overcharged the government. They were forced to repay, but ultimately received a plaque from DOT in their service to the Gulf. (Kromm and Sturgis, 2008)

Full and open competition for contracts was suspended. 70% of all contracts over \$500,000 were closed bids. (Kromm and Sturgis, 2008)

The US Committee on Government Reform accused 19 contracts worth \$8.75 billion dollars of waste, fraud, abuse and mismanagement. (Kromm and Sturgis, 2008)

25(1): *primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities*

(2): *international humanitarian organizations have the right to offer services, shall be considered an act of good faith, shall not be arbitrarily withheld, esp. when authorities are unable or unwilling to provide assistance*

(3): *authorities shall grant free passage of humanitarian assistance and persons engaged in assistance rapid and*

The US government declined humanitarian aid from 41 countries, including but not limited to personnel and medical supplies such as insulin from the Bahamas, sterile gloves from Finland, and pharmaceuticals from Germany, first aid kits from Norway and vaccines from the UK. (Kromm and Sturgis, 2008)

unimpeded access to the internally displaced.

27(1): International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of the IDPs and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

*28(1): the national government has primary settlement responsibilities, to establish conditions as well as provide the means which allow IDPs to return voluntarily, in safety and with dignity...or to resettle voluntarily in another part of the country...facilitate the reintegration
(2) ensure full participation of IDPs in planning and management of their return or resettlement and reintegration*

*29(1): non-discrimination against IDPs in resettlement; participation in government
(2) authorities have the duty and responsibility to assist IDPs to recover to the extent possible property and possessions which were left behind or dispossessed, when not possible, shall provide appropriate compensation or reparation*

30: authorities shall grant and facilitate for international humanitarian organizations in the exercise of their mandates, rapid and unimpeded access to IDPs to assist in return or resettlement and reintegration

Reports against the American Red Cross (the largest recipient of charitable donations) claim that Latinos and Native Americans were excluded or dismissed from shelters and services. (Kromm and Sturgis, 2008)
Reports also claim that donations were diverted for private gain. (Kromm and Sturgis, 2008)

FEMA tried to retroactively recoup \$410 million from persons who were not supposed to have received aid and charged interest to those who did not pay it back in time. Some letters were misdirected and persons who had not received aid were told they owed up to \$10,000. Others were found to have reported “honest mistakes” in interpreting the forms, leading one federal judge to call FEMA’s confusing rules “incomprehensible hieroglyphic abbreviations.” (Kromm and Sturgis, 2008)

Residents, especially poor and minorities, reported that they failed to receive planning and neighborhood meeting notices for rebuilding efforts. (Kromm and Sturgis, 2008)

66% of discrimination audits found discrimination of blacks in housing practices where whites were favored as renters. (Dickerson, 2008)

Some organizations have reported that they had been prevented from attempting to reach voters to vote in the New Orleans mayoral election. (Kromm and Sturgis, 2008)

What Went Right

The layering of atrocity upon atrocity is shocking. But an evaluation would not be honest unless it reviewed positive actions that also occurred. The Coast Guard's Search and Rescue team have been praised for saving thousands of lives. Non-governmental organizations and individual volunteers stood up to the challenge and lent aid. A post-disaster assessment will find that those who were flexible enough to improvise response activities quickly, like the Coast Guard and the non-profits, were those who were able to protect the human rights of others. Officials in Hattiesburg, MS did recognize, though at the last minute, that Latinos would be in danger, so they flyered Hispanic communities with evacuation information in Spanish. Incidents like these are bright spots in the tragedy. It can be credited to the nation of nurturing a culture of leadership and innovation in its citizens to provide unfettered human capital in crisis situations. However, a total laissez-faire approach is clearly not the answer as the government is the only entity with the mandate and the capacity to ensure the safety of all persons despite their socio-economic status or level of privilege. (Schenk, 2009)

Individual heroes like hospital staff and prison wardens who stayed at their post to take care of those who could not be evacuated can also be counted as human rights successes. Or Phyllis Mann, former president of the Louisiana Association of Criminal Defense Lawyers, who sent out to find prison inmates lost in the system. Mann and other volunteers were able to contact thousands of defendants to let them know that they were accounted for and to reach out to their families to inform them of their situation. (Garrett and Tetlow, 2006)

Although some initial complaints were made of the confusing FEMA registration website, the Department of Justice contracted the National Center for Missing and Exploited Children who partnered with CNN to continuously broadcast information about missing persons.

A popular magazine reported that 3,276 children and 9,000 adults in Louisiana, Mississippi and Alabama went missing during the storm. Of these, hundreds of families were reunited through these efforts. In October of 2005, Louisiana partnered with an international NGO, the International Commission on Missing Persons to use DNA technology to identify bones of the dead. (CNN, 2005) The military compound Jackson Barracks found at least three Native American burial grounds on their property that were marked to be left untouched by rebuilding efforts. (Personal communication, 2010)

Perhaps the best possible outcome of the Katrina fiasco was what society has learned from our mistakes and is continuing to improve. The national emergency alert system changed three months later to include other languages in its broadcast. (Kromm and Sturgis, 2008) Cases have since been brought to justice. For instance, Lt. Michael Lohman admitted to writing a 17 page false report to cover up the shootings on Danziger Bridge. (Feb. 24, 2010) While it is horrifying that it happened, the justice system does give us some wins. In the next chapter, I will conclude by putting it all together for what this means for protecting the human rights of internally displaced persons in environmental disasters.

Domestic and International Comparisons

The state socially constructs their responsibility and codifies it within policy, in this case, as the Stafford Act. There are several tensions between the way the United States constructs their scope of responsibility and the way it is written in international law, in this case, the UN Guiding Principles on Internally Displaced Persons. The Stafford Act clearly places the responsibility at the local level whereas the Guidelines assume that anything that happens within the national boundaries is the ultimate responsibility of the national government. This is at odds with the

interests of the State. The United States is built on the principle of federalism, where state sovereignty reaches to the state level. The provision that the Governor must request the aid of the President reflects this value. It would be taboo for the federal government to overstep its authority and penetrate without invitation. This limitation proved costly in the Katrina legacy where partisan politics prevented a quick response.

Additionally, the Guiding Principles clearly define the right to be free from displacement whereas this language is absent in the Guiding Principles. This gap is clearly in the interest at the state that seeks to promote the value of individual will, where citizens can live where they want to, even if they place themselves at risk. This transfers the blame to the displaced, who are seen as voluntarily residing in risky locales. Displacement is seen as consequence. The government can do what it can to make a place safe, but it cannot choose where people ultimately decide to live. Of course this argument nearly always comes from outsiders looking at a disaster that they are not a part of. It assumes that people have a real choice and very rational factors like low income housing are not disproportionately available in high-risk areas. It assumes that all consumers have equal access to information regarding the relative hazard of an area. It assumes that the invisible hand of the market is doing its job and signaling to consumers through prices to choose the most highly valued land. It forgets that values are socially constructed and what might be considered high value to some (storm protecting wetlands) are of low value to others (developers) and that these values are supposedly reflected in market prices. It assumes that the government is completely absent from decision-making, and that federal flood insurance has no incentive that alters peoples' choices.

The Guiding Principles push governments to accept foreign aid, entitling, in fact, displaced persons to humanitarian aid. In the United States, selectivity in accepting aid plays two

roles. First, it allows the United States to protect their status as a sovereign state capable of handling their own problems. Secondly, on the ground it helps authorities deal with basic logistics. Officials were overwhelmed with well-intentioned domestic donations (bowling balls, for example), and adding foreign donations may have added to the chaos.

Chapter 5

Key Findings and Recommendations

Key finding: *Returning internally displaced persons to their original habitat does not fulfill the human right to return if that location is untenable.*

This paper problematizes the issue of the right to return, a controversial topic in the case of Katrina. On the one hand, internally displaced persons may want to return to their homes after a disaster because it is familiar and emotionally safe. On the other hand, after a catastrophe that renders the home untenable, return to such a state risks violations of human dignity. Katrina flooded 80% of the City of New Orleans, and many areas are at risk for future flooding and land loss through coastal erosion, soil subsidence, and sea level rise. The City missed an opportunity after Katrina to shrink the city footprint by concentrating density in the high elevation areas.

Recommendation: *The right to return should be interpreted as a right to return to dignity after a disaster, not necessarily to the same geographic location*

Instead, “return” was socially constructed to mean returning people to their property, whether or not they had access to social infrastructure required to live in dignity. This leaves the city with sparse populations in remote areas without access to grocery stores, transportation and other necessities. Regionally, residents have returned to threatened coastal regions. Instead of offering livelihood alternatives, the State of Louisiana waits for them to ‘voluntarily’ move out. I argue that this decision of indecision does not respect the right of people to live with dignity. The city, state and federal governments use direct and indirect methods to influence human settlement patterns, and the Gulf Coast is one area where they should acknowledge their role and attend to proactively. The figures below show what the Louisiana coastal border looks like today (Figure 4) and what scientists predict the border might look like in 2100 taking into account

erosion, soil subsidence and sea level rise (Figure 5). Major changes in the landscape will influence human settlements, and governments have an opportunity to plan for this in ways that ensure that the displaced live in dignity.

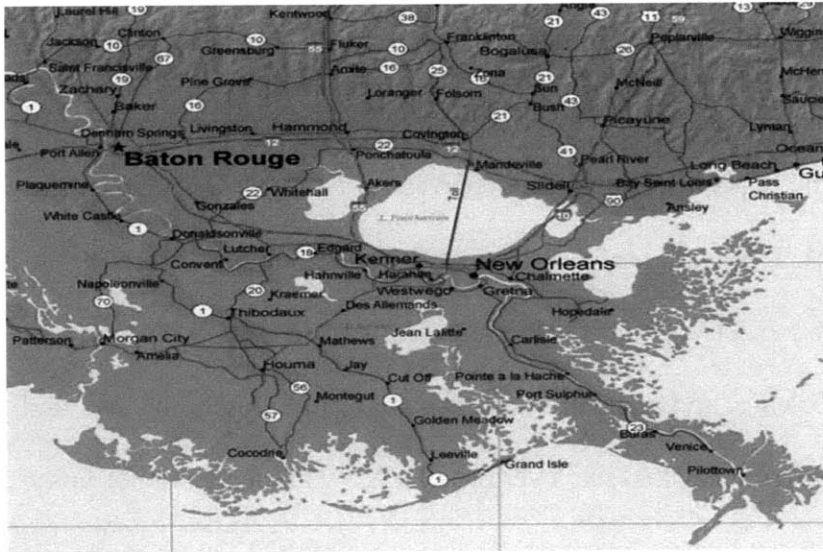


Figure 4 2010 Map of Coastal Louisiana showing New Orleans.



Figure 5 Louisiana's Coast 2100, a moderate prediction. (Blum and Roberts 2009)

Recommendation: Greater value on human dignity should be considered an opportunity to nudge people to move to ecologically safer areas.

A study of the Stafford Act and how it is interpreted on the ground by FEMA officials finds that certain response methods the federal government uses have the potential to influence human settlement patterns. These methods include: monetary compensation to displaced persons (i.e, Road Home Grants), insurance subsidies to homeowners, public assistance for rebuilding municipal facilities, and risk mapping of velocity zones and associating them with conditionalities for public assistance funding. The federal government should give up the notion that where a person chooses to live is solely an individual choice. Rather, it is the result of an equation balancing individual desire and social structure. And a part of human dignity is to be able to make an informed decision between desire and social reality. Making safer places more desirable and risky areas less desirable is not coercion. Once recognized, the government should cease using these mechanisms haphazardly and instead incorporate them into planning scenarios where they can be used to encourage people to live to less environmentally dangerous locations. It should be emphasized that just as these mechanisms can move people *out*, there should be complimentary planning that allows people *in*. For example, insurance policies could make at risk areas less affordable, but this needs to be complemented by affordable housing in low risk areas to ensure that those priced out of risk zones can live with dignity.

Recommendation: Re-interpret the Stafford Act to improve social infrastructure

The Stafford Act could be re-interpreted to provide for social assistance for personal improvement so people can use physical infrastructure appropriately and access funds without corruption. This paper found that psychological stress is not adequately recognized by the federal government as something that keeps displaced persons from engaging in the community and

rebuilding efforts. Long-term psychological services for displaced persons are inadequate. Therefore, money should also be made available to build flexible social infrastructure and train personnel for intake, counseling, medical services and child care that could be called upon to handle future emergencies. Federal money through FEMA's hazard mitigation department should be opened to sending and host cities to designate roles, pre-vet vendors, identify potential shelters, practice drills and coordinate non-profits to respond to an immediate demand.

Recommendation: Re-interpret the Stafford Act to disburse funds to receiving cities

One recommendation to reinterpret how funds are disbursed is in the Public Assistance program. Funds are available for places directly hit by large disaster. However, as displacement patterns in Katrina showed, humans travel on average 200 miles away from the epicenter of disaster. This can be a significant financial burden to communities that open their doors to victims. Houston added 100,000 people overnight during the Katrina storm. Other large receiving cities were Atlanta, Austin and Baton Rouge. This suggests that cities and towns within a 200 mile radius should expect and plan for future disasters in nearby regions. Expectations of how residents in these cities should treat victims should also be normalized in the culture of the city to promote tolerance. Authorities should be educated on human rights and their role in ensuring the rights of the displaced. Thinking through and practicing disaster scenarios may relieve the initial shock in the event of massive population influx. Like the Missouri towns that Mike Karl spoke of, cities should collaborate on plans or mutual agreements for intake. This should be part of mainstreaming disaster risk management into urban planning.

Recommendation: Overlap data on the socially vulnerable with ecologically vulnerable areas to target at-risk groups

The need to develop and distribute maps identifying socially vulnerable populations and overlapping them with ecologically vulnerable areas is of great importance in identifying potential hot spots. With this information, human rights advocates could target these communities to communicate the importance of disaster risk management and establish networks that can proactively address crises. FEMA, too, could use this information to become more efficient in hazard mitigation. Finally, resettlement must be recognized by local and federal governments as climate adaptation strategies that can be used to prevent human rights abuses. People who live in ecologically vulnerable areas are not ignorant to inevitable change and should not be treated as such. They should be provided with resources that will help them adapt to new livelihoods elsewhere.

FEMA has spent the last five years re-writing protocols to respond to future events with great efficiency. Yet, these well-intentioned maneuvers are short-sighted. While planning for a few decades out is absolutely necessary as well as highly motivating to the community, long-term scenario planning should inform today's decisions. Human rights will not be secured if the country does not identify, prioritize, and plan for mass displacement of communities living in places of impermanence.

Chapter 6

Conclusion

This thesis attempted to contribute to the conversation on the right to return in the case of Katrina by pushing the discussion onto a larger scale. I discuss how the national framework enables or constrains ideas about the right to return and how international doctrine can provide a normative baseline against which to judge if human dignity is protected. I develop a vulnerability analysis to assess the interaction of the social and environmental factors that build up to eventually force mass displacement. This paper began with defining how the victims of Katrina should be labeled. It was found that among the choices – environmental migrants, environmental refugees – the best term that fit the situation is “internally displaced persons.” Internally displaced persons are those that leave their location of habitat in response to crisis. As such, they are using the mechanism of migration as an adaptation strategy.

This paper has also argued against the idea that Hurricane Katrina was an anomaly. Instead, Katrina is seen as the entirety of social, political, economic, geologic and hydrologic factors that was exposed by disaster. The story is set at a global level, acknowledging local idiosyncrasies but demonstrating what governments and the international community can learn from the experience to protect the rights of the displaced in the future. The paper reviewed the literature on disaster research and sociologies of disaster to contribute to the conversation on human relationship to nature in the context of crisis. Next, the paper studied the Robert T. Stafford Act, the domestic legislation that authorizes FEMA to disburse funds in a federally declared emergency. Using semi-structured interviews, the paper explored how officials on the ground interpret their role in implementing the Stafford Act with a focus on New Orleans. Chapter 4 compared and contrasted this perspective with the priorities of the international

community, discussed here through international treaties and customary law, interpreted by Walter Kaelin, who has published widely on climate-induced displacement and holds the position of United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. Using this normative baseline, I present evidence that the federal government holds ultimate responsibility for human rights violations that occurred and continue to occur to those displaced by the storm. I find that a reinterpretation of the Stafford Act could lead to a more rights-based approach towards internally displaced persons in the United States, especially in terms of identifying and informing persons living in ecologically hazardous areas of their resettlement options, supporting social infrastructure. The right to return needs to be untangled from geographic location. This does not mean that the socially vulnerable should be required give up their residencies for ‘the greater good’ without compensation or government support, as some may interpret it. Instead, the right to return means that the federal government is ultimately responsible for ensuring the right to return to dignity under the rubric of international norm. Ideally, this would mean return to previous habitat, but if that location is rendered untenable, then the government is responsible for providing safe and meaningful resettlement options. Through international treaties, the United States has made a promise to its citizens and to the world to ensure human dignity of the displaced before, during and after disaster.

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Appendix 1

Research Process

This paper has been enhanced by the comments provided by five respondents. To identify interviewees, I used the snowball technique beginning with key informant Marc Roy. At the time of writing, he teaches at Tulane University where I met him as my professor of a course on Disaster Response and Recovery: Legal and Social Implications. The class provided an overview of the Stafford Act and his interview provided a better understanding of the challenges FEMA officials face when dealing face-to-face with an emergency. He introduced me to Eddie Williams, Charles Schnaikhedre and Mike Karl. Eddie Williams is currently the FEMA Public Assistance Officer. Mr. Williams is an African American who lost his job in Katrina and took the FEMA position in October 2005 as a way to return. He began working with debris removal contracts. Charles Schnaikhedre is a Caucasian male who also joined FEMA immediately after the storm. He reports that he took the job as a way to help people who were displaced. He was probably the youngest of group, probably in his late 30s. Mike Karl was extremely helpful in identifying changes in the Stafford Act that were passed as a result of Katrina. His interview was not recorded, however, which is why direct quotes could not be attributed to him. Although I contacted female employees, I was unable to schedule an interview. As a sociologist, race, age and gender matter. I have no analysis of how demographics may have influenced the respondent's contributions, but it is important to note.

Walter Kaelin, the current United Nations Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, was kind enough to give me an interview over

Skype from his home in Switzerland. I was kindly put in contact with him through my advisor, Balakrishnan Rajagopal. Mr. Kaelin entered his field through his work in refugee law.

Appendix 2

Sample Katrina Timeline



The Brookings Institution **HURRICANE KATRINA TIMELINE**

<u>Day</u>	<u>Date</u>	<u>Time</u> (approx.)	<u>Action</u>
Wed	24-Aug	~	Tropical Depression 12 strengthens into Tropical Storm Katrina over the Central Bahamas. Hurricane warning issued for the southeastern Florida coast
Thurs	25-Aug	~	Katrina strikes Florida as a Cat 1 hurricane with 80 mph winds. Nine people reportedly died. Governor Jeb Bush declares State of Emergency in Florida
Fri	26-Aug	9:00 AM	Windspeed: 75 mph. Expected to become Cat 2 soon.
		~	White House declares impending disaster area. Orders FEMA and DHS to prepare. 10,000 National Guard troops dispatched along Gulf Coast (arrival time unclear).
		5:00 PM	Katrina moves out to Gulf of Mexico. Grows into Cat 2 storm with 100 mph winds. Veers northwest toward Louisiana and Mississippi. Expected to become Cat 3.
		11:00 PM	Center of landfall expected to be Gulfport and New Orleans.
		~	Louisiana Governor Kathleen Blanco declares State of Emergency.
Sat	27-Aug	5:00 AM	Katrina becomes Cat 3 storm with 115 mph winds. Hurricane warning issued for Louisiana's southeastern coast and for the northern Gulf Coast.
		6:00 AM	Expected Cat 4 storm.
		Afternoon	National Hurricane center Director Max Mayfield calls New Orleans Mayor Nagin to advise for a mandatory evacuation.
		5:00 PM	Nagin declares State of Emergency. Voluntary evacuation order. Residents in low-lying areas encouraged to evacuate.
		~	Mississippi Gov. Haley Barbour declares a State of Emergency. A mandatory evacuation ordered for Hancock County.
		5:00 PM	Weather Service Prediction: 45% chance that a Cat 4 or 5 storm will hit New Orleans directly.

